***United States Court of Appeals***

***for the***

***District of Columbia Circuit***


# TRANSCRIPT OF RECORD

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# Court of Appeals, District of Columbia

229

OCTOBER TERM, 1903.

No. 1334.

No. 8 SPECIAL CALENDAR.

IDA E. STANT AND ALMIRA V. BROWN, APPELLANTS,

*vs.*

AMERICAN SECURITY AND TRUST COMPANY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 12, 1903.

# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

**OCTOBER TERM, 1903.**

No. 1334.

NO 8. SPECIAL CALENDAR,

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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## INDEX.



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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 22, 1903.

# In the Court of Appeals of the District of Columbia.

IDA E. STANT ET AL., Appellants,
*vs.*
AMERICAN SECURITY AND TRUST COMPANY. } No. 1334.

1 I, George Brown, of the city of Washington, District of Columbia, do make, publish and declare this my last will and testament, hereby revoking all former wills by me at any time made.

I direct my executor hereinafter named to pay all my just debts and funeral expenses, and that my body be decently buried, but plainly as possible, by the *said* of my beloved wife, in the family burial ground in Congressional cemetery, and that the entire lots be properly and carefully cared for by my executor.

George Brown. Sheet No. 1.

I give and bequeath unto my children William F. Brown, Martha W. Mink, Samuel T. Brown and Isabell F. Champion my household furniture of whatsoever kind my wearing apparel and other articles of a personal nature to be by them disposed of in such manner as to them may seem best.

All the rest, residue and remainder of my estate, real and personal, whether now owned by me or hereafter acquired, I give, devise and bequeath unto the American Security and Trust Company, a corporation existing and doing business in the District of Columbia under the authority of the laws in force therein, to be by said company taken and held in and upon the trusts following, namely—to take, hold and manage the same and collect all the rents, issues and profits therefrom and out of the same pay all taxes, insurance premiums and all charges for the repair and proper preservation of the property in its hands, and with full power to sell and convey or mortgage the same or any part thereof in its judgment necessary to be sold or mortgaged for the best interests of my estate, and invest and re-invest the proceeds of sale; such investment and reinvestment to be subject to the terms of the trust herein created, with no obligation on the part of any
2 purchaser to see to the application of the purchase money.

It is my desire, however, because of my confidence in the Union of the States and the great future which awaits this capital city that my estate should be kept intact as near as may be until its final distribution, and that my executor and trustee in making sales shall dispose of the least productive parts thereof, giving and granting unto my said executor and trustee the power, if it deem it wise, to use the proceeds of such sale or sales for the repair and betterment of the remainder of the real estate, but it is to be distinctly

George Brown. Sheet No. 2.

understood that by the expression of this wish I do not intend to limit or hamper the powers of sale and mortgage hereinbefore given my executor and trustee.

I direct my executor to dispose of my two gold watches and the sword and belt worn by me in defence of the Union by giving the same to such of my grandchildren who shall by reason of their sober, honest and upright lives merit such gift, and I leave it to the judgment of my children William F. Brown, Martha W. Mink, Samuel T. Brown and Isabell F. Champion to decide which of said grandchildren shall take the gifts.

I direct my executor and trustee to hold in trust the house No. 2542 Jessup street, in Philadelphia, Pennsylvania, for the use and benefit of my grand-children Mabel D. Brown and Elizabeth D. Brown, daughters of my deceased son Martin V. Brown until such time as the youngest or the survivor of them shall attain the age of twenty-one years when my trustee shall convey said house and the lot on which it stands to said Mabel D. and Elizabeth D. as tenants in common, or the survivor of them if either be dead, prior to which time any income therefrom shall be paid to them or to their proper guardian for their use. This subject to the mortgage thereon.

3 I also direct my executor and trustee to hold in trust my two lots and the improvements thereon, which I purchased from the South Twelfth Street Real Estate Company of Philadelphia, and which was situate on Tenth street near Curtin street in Philadelphia, Pennsylvania, for the use and benefit of my son Samuel T. Brown for the term of his natural life, he being permitted to take the income therefrom or occupy the same as he may please, and upon his death to convey the same to such children of his as may at that time be living—should there be no such children then said lots shall fall into and become a part of the rest and residue of my estate.

George Brown. Sheet No. 3.

I direct my executor and trustee to convey and quit claim unto Ida E. Stant, my daughter, the lots which I hold in trust for her and which are located at Colonial Beach, Virginia, she, however, to pay off whatever debt may be due me or my estate from her as shown by my book account.

To my son George T. Brown and my grandchildren Thomas B. Bentrick and Mabel D. Brown I give and bequeath the sum of one dollar and no more except that I confirm the provision heretofore made for Mabel D. Brown in the devise and bequest to her of an interest in the house No. 2542 Jessup street, Philadelphia, Pennsylvania.

All the rest, residue and remainder of my estate I direct my executor and trustee to retain and manage, with all the rights and powers which I might or could exercise over the same were I living, and the net income therefrom to dispose of in the manner following, that is, to divide the same into six equal parts, making distribution thereof as near as may be quarterly, paying the same to the persons and in the proportions as follows:

4 To my son William F. Brown a share equal to one-sixth,
To my son Samuel T. Brown a share equal to one-sixth,
To my daughter Martha W. Mink a share equal to one-sixth,
To my daughter Isabell F. Champion a share equal to one-sixth,
To my daughters Ida E. Stant, Annie E. Edmonds and Almira V. Brown a share equal to one-third of one-sixth to each,
To my grandchildren Walter C. Bentrick and Elizabeth D. Brown a share equal to one-half of one-sixth to each. The shares of income as above stated to be paid to my said children and grandchildren severally during their lifetime.

In the event of the death of my children the said William F. Brown, Samuel T. Brown, Martha W. Mink and Isabell F. Champion, or any one or more of them, I direct my executor and trustee to transfer and convey in fee simple one-sixth part of the said rest and residue of my estate to such child or children of them or either of them as may survive them, or failing a child or children then such share or shares to continue in the trust and the net income of such share or shares be added to and divided equally between the survivors or survivor of them, and upon the death of the survivor leaving no issue alive then what may remain of said rest and residue of my estate to convey and transfer in equal shares to the living child or children of such of my said children as shall die leaving issue surviving.

Upon the death of Ida E. Stant, Annie E. Edmonds or Almira V. Brown, or either of them I direct that the share of income payable to them, or either of them, shall be added to the share or shares of my said first named four children or the survivors or survivor of them, and upon the death of the survivor of these last named
5 beneficiaries that the full share from which their income was derived shall be added to the shares of my said four children and disposed of in the same manner as hereinbefore provided for the disposition of the shares set apart for their use and benefit.

Upon the death of my grandchildren Walter C. Bentrick and Elizabeth D. Brown, or either of them, I direct the conveyance of the share or part of my estate from which their income is derived to such child or children of them or either of them as may sur-



5. vive them, and failing such issue then that said share shall also be added to the shares of my first named four children and disposed of in the manner provided for the disposition of the shares set apart for their use.

The devises and bequests herein made are made subject to such mortgages and incumbrances as may be a lien upon the property devised at the time of my death, or substituted therefor by my trustee. Upon any mortgage falling due and required to be satisfied I empower my trustee in its discretion to replace the same by a further mortgage so that the life tenants shall have the full benefit of the entire net income less necessary interest charges and charges for maintenance and preservation of the property.

In the execution of the trusts herein reposed in my trustee I

empower it to make, execute and deliver all deeds, assurances and writings necessary and proper to be made and I exonerate any purchaser or purchasers from the trustee from any obligation to see to the application of the purchase-money.

I nominate constitute and appoint the said American Security and Trust Company the executor of this my will.

6 In testimony whereof I have hereunto set my hand and seal, at Washington, D. C., this twenty-first day of July, A. D. 1900.

GEORGE BROWN. [SEAL.]

Signed sealed published and declared by the above named testator, George Brown, at Washington, D. C., on the date above mentioned, as and for his last will and testament, in the presence of us, who, at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

WM. A. McKENNEY,
1405 *G St. N. W., Washington, D. C.*
JEROME N. C. BONAPARTE,
1405 *G St. N. W., Washington, D. C.*
ALFRED B. LEET,
1405 *G St. N. W., Wash., D. C.*

7 I, George Brown, of the city of Washington, District of Columbia, do make, publish and declare this as and for a codicil to my last will and testament, which said will bears date the twenty-first day of July, A. D. 1900.

Whereas in and by my said will I gave and bequeathed unto my children William F. Brown, Martha W. Mink, Samuel T. Brown and Isabell F. Champion, my household furniture of whatsoever kind, my wearing apparel and other articles of a personal nature, I now revoke and annul said gift and bequest, and in lieu thereof make the following bequest:

I give and bequeath unto my said daughter Martha W. Mink all of said household furniture, wearing apparel and articles of a personal nature, and in addition thereto all personal property of which I may die possessed.

And whereas I also in and by my said last will and testament gave and bequeathed unto the American Security and Trust Company all the rest of my estate, real and personal I now declare that having by the above paragraph disposed of all my personal property, that the gift, devise and bequest to the said American Security and Trust Company shall relate to and take effect only as to the real estate of which I may die seized and possessed.

And whereas in and by my said last will and testament I directed my executor and trustee to divide the net income from a certain part thereof into six equal parts, and pay the same in the proportions as follows: To my son William F. Brown a share equal to

one-sixth; to my son Samuel T. Brown a share equal to one-
8 sixth; to my daughter Martha W. Mink a share equal to
one-sixth; to my daughter Isabell F. Champion a share equal to one-sixth; to my daughters Ida E. Stant, Annie E. Edmonds and Almira V. Brown a share equal to one-third of one-sixth, and to each of my grand-children Walter C. Bentrick and Elizabeth D. Brown (since deceased) a share equal to one-half of one-sixth, said shares of income to be paid to my said children and grandchildren severally during their lifetime, I now revoke and modify said direction and bequest and direct that said income be disposed of in the manner following, that is to say:

I direct my executor and trustee to divide said income into five equal parts, and to pay one part to each of my following named children:

To my son, William F. Brown, one-fifth share; to my son, Samuel T. Brown, one-fifth share; to my daughter, Martha W. Mink, one-fifth share, to my daughter Isabell F. Champion, one-fifth share: to my daughters, Ida E. Stant, Annie E. Edmonds and Almira V. Brown, one-fifth share to be divided equally between them. In lieu of the share in said income which I gave to my grandson Walter C. Bentrick, which gift I now revoke, I direct that my executor and trustee shall hold in trust the house and premises No. 2530 Jessup street, Philadelphia, Pennsylvania, for his use and benefit for and during the term of his natural life, and upon his death to convey said house and premises unto such child or children of him as may survive him, or, failing such child or children said house and premises to revert to and become a part of the rest and residue of my estate; said house, however, to be taken for his use
subject to such mortgage and lien as may be upon it at the
9 time of my death. Where I have in my said will provided
that in the event of the death of my children, the said William F. Brown, Samuel T. Brown, Martha W. Mink and Isabel F. Champion, that my executor and trustee shall convey in fee simple one-sixth part of said rest and residue of my estate to the child or children of them or either of them as may survive them, I now modify this provision by substituting one-fifth part for the words "one-sixth part," and make this direction in respect to all other parts of my will where it may be necessary to carry out the intent to substitute one-fifth share for the hereinbefore provided one-sixth share.

In all other respects I hereby confirm and republish my said last will and testament.

In testimony whereof I have hereunto set my hand and affixed my seal this fourth day of January, A. D. 1901.

GEORGE BROWN. [SEAL.]

Signed sealed published and declared by the above named testator George Brown, at Washington, D. C., on the day above named, as and for a codicil to his last will and testament, in the presence of us, who,

at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

HOWARD S. REESIDE,
1405 *G N. W.*
ALFRED B. LEET,
1405 *G St. N. W., Wash., D. C.*
WM. A. McKENNEY,
1405 *G St. N. W., Washington, D. C.*

10 Form No. 1.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

On the 17th day of July, 1901, came Wm. A. McKenney trust officer Am. Sec. & Trust Co. and made oath on the Holy Evangels of Almighty God, that he does not know of any will or codicil of George Brown late of said District, deceased, other than the aforegoing instrument of writing dated July 21, 1900 and codicil thereto dated Jan'y 4, 1901; that he received the same from the safe deposit vault of the American Security & Trust Company, where the same had been deposited for safe-keeping; and that said —— —— died on or about the — day of ——, 1901.

WM. A. McKENNEY.

Sworn to and subscribed before me,
LOUIS A. DENT,
*Register of Wills for the District of Columbia,*
*Clerk of the Probate Court.*

11 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

JULY 17, 1901.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared William A. McKenney, one of the subscribing witnesses to the foregoing last will and testament of George Brown, deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign said will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid will was signed in the presence and at the request of testator and in the presence of the

other subscribing witnesses, who also signed in his presence, and in the presence and at the request of the testator.

Test: JOHN R. ROUZER,
*Acting Register of Wills.*

12 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

JULY 17, 1901.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared William A. McKenney, one of the subscribing witnesses to the foregoing codicil to the last will and testament of George Brown, deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign said codicil; that he published, pronounced, and declared the same to be a codicil to his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid codicil was signed in the presence and at the request of testator and in the presence of the other subscribing witnesses, who also signed in his presence, and in the presence and at the request of the testator.

Test: JOHN R. ROUZER,
*Acting Register of Wills.*

13 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

JULY 25, 1901.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Howard S. Reeside, one of the subscribing witnesses to the foregoing codicil to the last will and testament of George Brown, deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign said codicil; that he published, pronounced, and declared the same to be a codicil to his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid codicil was signed in the presence and at the request of testator and in the presence of the other subscribing witnesses, who also signed in his presence, and in the presence and at the request of the testator.

Test: JOHN R. ROUZER,
*Acting Register of Wills.*

14 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

NOVEMBER 8, 1901.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Jerome N. C. Bonaparte, one of the subscribing witnesses to the foregoing last will and testament of George Brown deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign said will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid will was signed in the presence and at the request of testator and in the presence of the other subscribing witnesses, who also signed in his presence, and in the presence and at the request of the testator.

Test: LOUIS A. DENT,
*Register of Wills.*

15 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

NOVEMBER 12, 1901.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Alfred B. Leet, one of the subscribing witnesses to the foregoing last will and testament of George Brown, deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign said will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid will was signed in the presence and at the request of testator and in the presence of the other subscribing witnesses, who also signed in his presence, and in the presence and at the request of the testator.

Test: LOUIS A. DENT,
*Register of Wills.*

16 The Supreme Court of the District of Columbia, Holding a Special Term for Orphans' Court Business.

NOVEMBER 12, 1901.

DISTRICT OF COLUMBIA, *To wit:*

This day appeared Alfred B. Leet, one of the subscribing witnesses to the foregoing codicil to the last will and testament of George Brown, deceased, late of the District of Columbia, and solemnly made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign said codicil; that he published, pronounced, and declared the same to be a codicil to his last will and testament; that at the time of so doing he was, to the best of his apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that his name as witness to the aforesaid codicil was signed in the presence and at the request of testator and in the presence of the other subscribing witnesses, who also signed in his presence, and in the presence and at the request of the testator.

Test:

LOUIS A. DENT,
*Register of Wills.*

17 Supreme Court of the District of Columbia, Holding a Probate Court.

THURSDAY, *January* 29, 1903.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379, Adm. Docket 28.

AMERICAN SECURITY AND TRUST COMPANY, Plaintiff,
*vs.*
IDA E. STANT and ALMIRA V. BROWN, Defendants.

Now come here again the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after the case is given them in charge, upon their oath say:

In answer to the first issue:

1. Were said paper writings, dated respectively July 21, 1900 and January 4, 1901, propounded as the last will and testament and codicil of said George Brown, deceased, in fact executed by him? They answer Yes.

In answer to the second issue:

2. Was the said George Brown at the time of the execution of said paper writings of sound and disposing mind and capable of executing a valid deed or contract? They answer Yes.

In answer to the third issue:

3. Were said paper writings executed by said George Brown

under the undue influence of Mary J. Brown or of any other person or persons? They answer No.

In answer to the fourth issue:

4. Was the execution of said paper writings procured by fraud, misrepresentation and artifice? They answer No.

18 In answer to the fifth issue:

5. Are said paper writings the last will and testament and codicil of said George Brown? They answer Yes.

(Endorsement: Last will and testament of George Brown, deceased, as recorded in Will Book No. 55 folio 139, of the probate court.)

19 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* Estate of GEORGE BROWN, Dec'd. No. 10379.

*Petition.*

Your petitioner respectfully shows unto the court as follows:

That it is a corporation existing and doing business in the District of Columbia under the authority of the laws in force therein, and is authorized by law to act as the executor and administrator of the estates of deceased persons.

That George Brown, late a citizen of the United States and a resident in the District of Columbia, departed this life on or about the 2nd day of May, A. D. 1901.

That said decedent left a last will and testament which said will bears date the 21st day of July, A. D. 1900, and one codicil thereto, which said codicil bears date the 4th day of January, A. D. 1901.

That said decedent left him surviving no widow, and as his heirs at law and next of kin the persons whose names, residences and relationship to the deceased are as follows, to wit: William F.

20 Brown, a son, residing at Lawndale, Phila., Penna., Samuel T. Brown, a son, residing at Philadelphia, Penna., George T. Brown, a son, residing at Philadelphia, Penna., Martha W. Mink, a daughter, residing at Washington, D. C., Annie E. Edmonds, a daughter, residing at Washington, D. C., Elmira V. Brown, a daughter, residing at Washington, D. C., Ida E. Stant, a daughter, residing at Washington, D. C., Isabel F. Champion, a daughter, residing at Dayton, Ohio, Mabel D. Brown, a grand-daughter, residing at Washington, D. C., Walter C. Bentrick, a grand-son, residing at Washington, D. C.;

That Elizabeth D. Brown and Thomas B. Bentrick, grandchildren of the testator named in the said will and testament are now deceased, and as your petitioner is informed and believes and hence avers departed this life prior to the death of the testator, leaving no issue them surviving.

That said Mabel D. Brown is an infant under the age of twenty-one years;

That said decedent left but little personal property, the same consisting of, so far as your petitioner has been able to ascertain, household furniture of the value of about $200, money in bank to the amount of about $200.

That said decedent died seized and possessed of a large amount of real estate situate in the city of Washington, D. C., and in the city of Philadelphia, Penna., all which said real estate is fully and at large set forth in said last will and testament of said decedent, reference being had to the same for a particular description thereof.

21 That the unsecured debts of the decedent so far as have been ascertained are small and are limited to the expenses attendant upon his last illness and funeral.

That your petitioner is named in said last will and testament as the executor thereof, and as such believes itself to be entitled to have letters testamentary on said estate issued unto it.

Wherefore your petitioner prays that all necessary writs may issue out of this honorable court and that all necessary orders may be granted, and that a guardian *ad litem* may be appointed for said Mabel D. Brown, and that said last will and testament may be admitted to probate and record as a will of both real and personal property, and that letters testamentary may be granted unto it accordingly.

AMERICAN SECURITY AND TRUST COMPANY,
By CHARLES J. BELL, *President.*
[CORPORATE SEAL.]

WM. A. McKENNEY,
*Att'y for Petitioner.*

DISTRICT OF COLUMBIA, *ss:*

I, Charles J. Bell, being first duly sworn, depose and say that I have read the foregoing petition by me as such president subscribed and know the contents thereof; that the matters and things therein positively stated are true, and those stated upon information and belief I believe to be true.

CHARLES J. BELL.

Subscribed and sworn to before me this 16th day of January, A. D. 1902.

[NOTARIAL SEAL.] CHARLES S. DOMER,
*Notary Public.*

(Endorsement: Petition of American Security & Trust Company for probate of will and letters testamentary. Filed Jan. 17, 1902. Louis A. Dent register of wills, D. C.)

22 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* The Estate of GEORGE BROWN, Deceased. No. 10379.

The petition of Ida E. Stant and Almira V. Brown respectfully shows as follows:

That the petitioners are children and devisees of the said George Brown, deceased, and are residents of the city of Washington and District of Columbia; that your petitioners have notice that a certain paper writing, bearing date July 21, 1900, and the codicil thereto, bearing date January 4, 1901, has been filed in this honorable court as the last will and testament and codicil of the said Goorge Brown, deceased.

Your petitioners further aver that their interests will be injuriously affected by the admission of said will and testament and codicil to probat- and record, wherefore they pray leave to file this their caveat against the said will and testament and codicil, and ask that they may be heard thereon before further action is taken by this honorable court, and for grounds of objection against said alleged will and testament and codicil your petitioners say: first, that the said paper writing, filed as the last will and testament and codicil of the said George Brown, deceased, is not the last will and testament and codicil of the said deceased: second, that at the time

23 of the execution of said will and testament and codicil the said George Brown was not of sound and disposing mind and was not capable of executing a valid deed or contract; third, that the said will and testament and codicil, if executed at all by the said George Brown, was executed under the undue influence, importunities, suggestions and persuasions of Mary J. Brown, or of some other person or persons, and is not the free and voluntary act of the said George Brown; fourth, that the said paper writing was procured by fraud, misrepresentation and artifice, and is not the free and voluntary act of the said George Brown.

Wherefore your petitioners pray:

That said paper writing, offered as the last will and testament and codicil of the said George Brown, may be refused admission to probat- and record, and that issues may be framed between these caveators and contestants and the proponents of said proposed last will and testament and codicil of the said George Brown, and that said issues may be tried in accordance with law and the practice of this honorable court, in order to determine the validity of said last will and testament and codicil of the said George Brown.

IDA E. STANT.
ALMIRA V. BROWN.

PERCIVAL M. BROWN,
ARTHUR BROWNING, *Att'ys.*

DISTRICT OF COLUMBIA, *ss:*

We, Ida E. Stant, and Almira V. Brown, do solemnly swear that we have heard read the aforegoing caveat to the alleged last will and codicil of George Brown, deceased, and the accompanying petition by us subscribed; that the facts therein stated are true according
24 to the best of our knowledge and belief.

IDA E. STANT.
ALMIRA V. BROWN.

Subscribed and sworn to before me this first day of May, A. D. 1902.

[NOTARIAL SEAL.] JAMES O'REILLY KUHN, JR.,
*Notary Public, D. C.*

(Endorsement: Caveat filed by Ida E. Stant and Almira V. Brown. Filed May 1, 1902. Louis A. Dent, register of wills, D. C. clerk of the probate court.)

25 In the Supreme Court of the District of Columbia, in Special Term as the Probate Court.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379.

The American Security and Trust Company, the executor named in the last will and codicil of said decedent and the proponent thereof for probate, for answer to the petition of Ida E. Stant and Almira V. Brown, caveators of said will and codicil, states and avers as follows:

It denies the averments set forth in said petition in respect of said will and codicil and the execution thereof and says, first, that the same are the last will and testament and codicil of said decedent; that, at the time of executing the same, said George Brown was of sound and disposing mind and capable of executing a valid deed or contract; third, that the same were executed by said George Brown, but were not executed by him under the undue influence, importunities, suggestions, and persuasions of Mary J. Brown, or of any other person or persons, and that the same are the free and voluntary act of the said George Brown; and fo-rth, that the same were not procured by fraud, misrepresentation and artifice.

26 And this respondent prays that, under the circumstances, the court will adjudge the following issues for trial by jury, and that it, as the executor and proponent as aforesaid, may have such other and further relief as may be deemed meet and proper.

27 *Proposed Issues.*

1st. Were said paper writings, dated respectively July 21, 1900, and January 4, 1901, propounded as the last will and testament and codicil of said George Brown, deceased, in fact executed by him.

2nd. Was the said George Brown at the time of the execution of said paper writings of sound and disposing mind and capable of executing a valid deed or contract.

3rd. Were said paper writings executed by said George Brown under the undue influence of Mary J. Brown, or of any other person or persons.

4th. Was the execution of said paper writings procured by fraud, misrepresentation and artifice.

5th. Are said paper writings the last will and testament and codicil of said George Brown.

AMERICAN SECURITY & TRUST CO.
WM. A. McKENNEY, [CORPORATE SEAL.]
*Trust Officer.*

DISTRICT OF COLUMBIA, *To wit:*

I, William A. McKenney, do swear that I am the trust officer of the above named respondent, The American Security and Trust Company: that said company is a body corporate under the laws of the United States, having its habitat in the District of
28 Columbia: that it is authorized by law to act as executor of estates: that I have read the foregoing answer signed by me in the name of said company and know the contents thereof: that the facts therein stated as of personal knowledge are true and those stated upon information and belief I believe to be true.

WM. A. McKENNEY.

Subscribed and sworn to before me this 19th day of September, 1902.

HOWARD S. REESIDE, [NOTARIAL SEAL.]
*Notary Public, D. C.*

(Endorsement: Answer of the American Security and Trust Company to petition of caveators. Filed Sep. 19, 1902, Louis A. Dent, register of wills, D. C., clerk of probate court.)

29 In the Supreme Court of the District of Columbia, in Special Term as the Probate Court.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379.

The petition of Ida E. Stant and Almira V. Brown, caveators, came on to be heard upon said petition and the answer of The American Security and Trust Company, proponent of said will and

codicil thereto; and having been argued by counsel for the respective parties and duly considered by the court, it is this 6th day of October, A. D. 1902, ordered, adjudged and decreed that the following issues be tried by a jury in this court, viz:

1. Were said paper writings, dated respectively July 21, 1900 and January 4, 1901, propounded as the last will and testament and codicil of said George Brown, deceased, in fact executed by him.

2. Was the said George Brown at the time of the execution of said paper writings of sound and disposing mind and capable of executing a valid deed or contract.

3. Were said paper writings executed by said George Brown under the undue influence of Mary J. Brown, or of any other person or persons.

30 4. Was the execution of said paper writings procured by fraud, misrepresentation and artifice.

5. Are said paper writings the last will and testament and codicil of said George Brown.

And that said trial take place on the 20th day of October, A. D. 1902.

JOB BARNARD, *Justice.*

(Endorsement: Decree defining issues and setting date for trial. Filed Oct. 6, 1902, Louis A. Dent, register of wills, D. C., clerk of probate court.)

31 Supreme Court of the District of Columbia, Holding a Probate Court.

THURSDAY, *January 29th*, 1903.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379, Adm. Docket 28.

AMERICAN SECURITY AND TRUST COMPANY, Plaintiff,
*vs.*
IDA E. STANT and ALMIRA V. BROWN, Defendants.

Now come here again the parties aforesaid in manner aforesaid and the same jury that was respited yesterday, who, after the case is given them in charge, upon their oath say:

In answer to the first issue:

1. Were said paper writings, dated respectively July 21, 1900 and January 4, 1901, propounded as the last will and testament and codicil of said George Brown, deceased, in fact executed by him? They answer Yes.

2. Was the said George Brown at the time of the execution of said paper writings of sound and disposing mind and capable of executing a valid deed or contract? They answer Yes.

3. Were said paper writings executed by said George Brown under

the undue influence of Mary J. Brown, or of any other person or persons? They answer No.

32 4. Was the execution of said paper writings procured by fraud, misrepresentation and artifice? They answer No.

5. Are said paper writings the last will and testament and codicil of said George Brown? They answer Yes.

(Endorsement: Minute. Filed Jan. 29, 1903, Louis A. Dent, register of wills, D. C., clerk of probate court.)

33 In the Supreme Court of the District of Columbia, in Special Term as a Probate Court.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379, Docket 28.

On the verdict of the jury, of record herein, upon the trial of the several issues in respect of the last will and codicil of said decedent, dated respectively July 21, 1900 and January 4, 1901, propounded for probate herein as such last will and codicil, and upon motion of William F. Mattingly, attorney for the caveatee, it is this 9th day of February, 1903, ordered, adjudged and decreed that said will and codicil be and the same hereby are admitted to probate and record as and for the last will and codicil of said decedent, and that letters testamentary do issue to said corporation, the American Security and Trust Company, the executor by the said will appointed.

JOB BARNARD, *Justice.*

From the above decree the caveators appeal to the Court of Appeals; and the security for costs on such appeal is hereby fixed at one hundred dollars.

JOB BARNARD, *Justice.*

(Endorsement: Decree admitting will and codicil to probate and record, and granting letters testamentary to the American Security and Trust Co. Appeal by caveators. Appeal bond $100. Filed Feb. 9, 1903, Louis A. Dent, register of wills, D. C., clerk of probate court.)

34 Supreme Court of the District of Columbia, Holding a Probate Court.

MONDAY, *March* 23, 1903.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379, Adm. Docket 28.

AMERICAN SECURITY AND TRUST Co., Plaintiff,
*vs.*
IDA E. STANT and ALMIRA V. BROWN, Defendants.

Now come here the defendants by Messrs. Brown and Keigwin their attorneys and submit to the court their bill of exceptions taken during the trial of the issues in this cause after notice to Wm. F. Mattingly Esquire, attorney for plaintiff, which bill of exceptions is taken by the court under consideration: whereupon, on motion of counsel for defendants, it is ordered by the court that the time to file the transcript of record on appeal in this cause be and it is hereby extended to Thursday, May 14, A. D. 1903, inclusive.

(Endorsement: Minute. Filed March 23, 1903, Louis A. Dent, register of wills, D. C., clerk of probate court.)

35 Supreme Court of the District of Columbia, Holding a Probate Court.

SATURDAY, *April* 4, 1903.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379, Adm. Docket 28.

AMERICAN SECURITY AND TRUST Co., Plaintiff,
*vs.*
IDA E. STANT and ALMIRA V. BROWN, Defendants.

It is ordered by the court that the present January term, A. D. 1903. of this court be and it is hereby prolonged to and including the 19th day of May, A. D. 1903 for the purpose of settling and filing the bill of exceptions in this cause—being the 38 days provided by the rule.

(Endorsement: Order prolonging term until May 19, 1903, inclusive to settle bill of exceptions. Filed April 4, 1903, Louis A. Dent, register of wills, D. C., clerk of probate court.)

36 Supreme Court of the District of Columbia, Holding a Probate Court.

THURSDAY, *May* 14, 1903.

*In re* Estate of GEORGE BROWN, Deceased. No. 10379, Adm. Docket 28.

AMERICAN SECURITY AND TRUST CO., Plaintiff,
*vs.*
IDA E. STANT and ALMIRA V. BROWN, Defendants.

Upon motion of the defendants, by their attorneys Messrs. Brown and Keigwin, it is by the court ordered, that the time for filing the transcript of the record in the Court of Appeals, on the appeal taken in this cause, be and it is hereby further extended until Monday June 15, A. D. 1903.

(Endorsement: Minute. Filed May 14, 1903, Louis A. Dent, register of wills, D. C., clerk of probate court.)

37 In the Supreme Court of the District of Columbia.

In the Matter of the Estate of GEORGE BROWN, Deceased. No. 10379, Administration Docket No. —.

Be it remembered that the above entitled cause came on to be heard upon the issues framed in the probate court, before Mr. Justice Barnard and a jury, on the 28th day of January, 1903, present for the caveators Mr. Brown and Mr. Keigwin, and for the caveatees Mr. Mattingly.

Whereupon the caveatees, to maintain the issues on their part joined, gave evidence tending to prove that George Brown, the person named in the issues, made and executed in due form of law the will and codicil in the said issues mentioned, the said will being dated and executed on the 21st day of July, 1900, and the said codicil being dated and executed on the 4th day of January, 1901. They gave further the testimony of WILLIAM A. MCKENNEY, attorney for the American Security and Trust Company, who prepared the said will and codicil, and of the attesting witnesses thereto, each of whom testified that the said testator was, in his opinion, of sound and disposing mind and capable of executing a valid deed or contract at the time of the execution of said will and codicil. Mr. McKenney on cross-examination testified that he had seen the testator several times within a period of about two months
38 prior to the execution of the will, with reference to the preparation of the said will, which was prepared in accordance

with his instructions, but had no other acquaintance with him. At the time of the execution of the will the testator signed each sheet thereof. Testator read the will and codicil before executing them. The attesting witnesses had known the testator only at the times when they attested his will, having been called in and introduced to him for that purpose. The caveatees further gave evidence tending to prove that the testator died in the District of Columbia on the 2nd day of May, 1901. And thereupon the said will and codicil were offered and admitted in evidence, and true copies of the same are hereto annexed marked "Exhibit A."

Thereupon the caveatees rested.

And thereupon the caveators, to maintain the issues on their part joined, called as a witness IDA E. STANT, one of the caveators, who testified as follows:

That she was a daughter of George Brown, the testator; that her mother, the wife of the testator, died on November 8, 1897; that after that date the testator's family, living with him at his house, consisted of his unmarried daughter, Almira V. Brown, a nephew Thomas Bentrick, a young man who was dependent upon the testator and Martin V. Brown, wife and two children; and that the persons named lived together in peace, harmony and affection until the latter part of the year 1899.

That in or about the month of November, 1899, one Mary J. Brown, the daughter of the testator's son George T. Brown, came to live with her grandfather the testator; that she was then about twenty-one years old, and had represented to her grandfather
39 that she was unable to remain at her father's house in Philadelphia because she could not get along with her stepmother; and that the testator had invited her to come to him and provided money for her travelling expenses; and that she, the said Mary J. Brown, lived with the testator until her death, which occurred on July 5, 1900.

The witness further stated that, shortly after the said Mary J. Brown came to the testator's house, she began to make threats that she was going to be mistress of the house, and made things unpleasant for other members of the family.

Whereupon the following ensued:

Mr. MATTINGLY: I object to that.

The COURT: I do not think you can state what she said. I do not think that is competent here at all.

The WITNESS: She made it very unpleasant, Judge, and she caused my father——

The COURT: That is stating an opinion, too. You are stating conclusions all the time Mrs. Stant.

Mr. KEIGWIN: If the court please, the witness' testimony as to declarations made by Mary J. Brown are not conclusions. Those are certainly facts.

The COURT: But declarations are pure hearsay.

Mr. KEIGWIN: I understand Mrs. Stant is speaking from what she heard. Of course we do not want her to testify to any hearsay.

The COURT: That is hearsay. That is what Mary J. Brown may have said there.

Mr. KEIGWIN: The fact that she said it, we submit, is a material fact in this case. We submit the declarations of a person who is engaged in a certain enterprise, whether good or bad, are evidence as to his purposes in that enterprise.

40 Mr. MATTINGLY: That is, where he is on trial.

Mr. KEIGWIN: No; whether he is on trial or not, if he is a mere stranger to the proceeding.

The COURT: I do not think I will let you go into that. Mary J. Brown cannot be here to testify in regard to it at all, and I do not think you can go into it.

Mr. KEIGWIN: Will you allow us to ask the witness if she had herself heard Mary J. Brown make any statements of that kind?

Mr. MATTINGLY: Of course not.

The COURT: I think you will have to be confined to what was done there, as it is a question of the capacity of the old gentleman. Whatever he said can be given in evidence for the purpose of testing his mind, but not for proving any facts. I will have to hold you to the rule in the Holt case, I think.

Mr. KEIGWIN: We will ask the question and then save an exception, if the court please.

The COURT: Very well.

By Mr. BROWN:

Q. Mrs. Stant, I will ask you what, if anything, you heard Mary J. Brown say in regard to her intentions of influencing or gaining control over George Brown?

Mr. MATTINGLY: I object, your honor.

The COURT: I will sustain the objection.

Mr. KEIGWIN: We reserve an exception.

By Mr. BROWN:

Q. Mrs. Stant, I will ask what, if anything, you heard Mr. Brown say in regard to the influence that Mary J. Brown was try-
41 ing to exert over him?

Mr. MATTINGLY: When and where?

Mr. BROWN: While she was living with him at his house? prior to her death, prior to the making of the will?

The COURT: Is that offered to prove the actual fact that such an influence was exerted, or for what purpose?

Mr. KEIGWIN: Yes; we offer to prove that influence was exerted.

The COURT: But you are offering now a declaration of the alleged testator here as to something he said. I say are you offering it for the purpose of proving that it was true—to prove it by that declaration?

Mr. KEIGWIN: Yes, we offer it for the purpose of proving the declaration was made, and for inferring from the declaration what the state of the testator's mind and affections were. I do not know of any better way to get at what a man's opinions are and what the state of his sentiments is than to take his language.

The COURT: For that purpose his statement is incompetent. The only purpose that it can be offered for, as I understand the ruling of the Supreme Court, is simply to show the condition of mind, whether it was sound or unsound, but not to prove the facts at all; and if you simply offer it on that issue of testamentary capacity, for that purpose it may be answered, but if it is for the purpose of showing or attempting to show from that statement that this girl did exert this influence over his mind, or to show what his feeling was towards the girl even, it is incompetent for that purpose and it should be excluded. It is hearsay.

42 Mr. KEIGWIN: Of course we are satisfied to take a half loaf when we cannot get all the bread, but we should like to reserve an exception as to the half which is denied us.

The question was read as follows:

Q. I will ask you what, if anything, you heard George Brown say in regard to the influence that Mary J. Brown was trying to exert over him while she was living with him at his house, prior to her death, prior to the making of the will? A. Why, father took me so by surprise one day. He shook his fist in my face and told me, for the stand I had taken against this grand-daughter, he intended to disinherit me entirely, and when his will was read——

The COURT: This is not answering the question, I think.

The WITNESS: Well, he told me he intended to disinherit me entirely.

The COURT: But he did not tell you anything in regard to her trying to exert——

A. It was for the stand I had taken against this grand-daughter.

Mr. MATTINGLY: That is not an answer to the question.

The COURT: No, it is not responsive to the question.

Mr. MATTINGLY: I move to strike it out.

The COURT: I think it should be stricken out.

Mr. KEIGWIN: We reserve an exception.

The same witness thereupon stated that the testator was seventy-two years old at the time of his death; that he had not been engaged in any business for more than twenty years; he just attended to the collection of his rents and the like of that up to the time of his last illness; that after the death of his wife in 1898 his health

43 had not been good; he was in poor health, he had heart trouble, of which he died; he could not stand any worry or excitement, and always complained that his head hurt him; that at the time of his wife's death he did not expect to live two weeks; that afterwards he repeatedly declared that he had never been the same since his wife died; that he was very violent in his temper and profane in his speech; that on one occasion, in March, 1900,

his house took fire and he was so excited by the fact that he collapsed and narrowly escaped death from the excitement, though he was at no time in danger of personal injury from the fire; and that after the said fire, which did but little damage, his mind seemed weaker, he became forgetful, he could not find things that he had put away, and he never acted the same toward his family. The witness thereupon expressed the opinion that the testator was frequently not in his right mind and was perfectly insane; that after the fire his mind was not so sound as before; and that, when he spoke of his children, he did not know what he was saying and would become perfectly furious.

By Mr. BROWN:

Q. What language would he use about the children? A. Why, that he intended to cut us off, that he would not give us a dollar, and that he would see us in the gutter.

Q. Was he profane when he would make these remarks; did he use profane language? A. Yes, sir; he was very profane in his language, very, I am sorry to say.

The witness further testified that, in or about the month of May, 1900, Mary J. Brown's conduct with the testator was so unbecoming that Almira Brown, the testator's daughter, ordered her to leave the house; that, thereupon the testator became much enraged; that, in consequence of this affair, the testator's daughters, Almira Brown and Annie Edmunds, were obliged to leave the testator's house, the children of Mrs. Edmunds being placed in an orphan asylum, the testator declaring that he would not give any of them anything to eat if they did not let Mary J. Brown return; and that the testator brought Mary J. Brown back to his house, where she remained until her death. That after this occurrence, the testator ignored his daughters entirely.

The witness was thereupon asked:

"What, if anything, did the testator's grand-daughter, Mary J. Brown, have to do with his treatment of these grandchildren?"

To which question the caveatee, for reasons before stated, objected, and the objection was sustained by the court; to which action of the court the caveators then and there duly excepted. Counsel for the caveators then offered to show by the witness that Mary J. Brown had told the testator that, unless he had those children and grandchildren sent off, she was going to leave. But the court refused to allow the caveators to prove that fact, to which action of the court the caveators then and there duly excepted.

The witness thereupon stated that the testator had forced his nephew, Thomas Bentrick, to leave the house, because Mary J. Brown said she would leave if the said Bentrick did not; and that the said Bentrick had left the house on this account. The witness stated that she was not present when Bentrick was required to leave the house, but that Bentrick had, shortly afterwards, stated the reason of his leaving, and the witness was proceeding to state the reason given by Bentrick. But the court stopped her and refused to allow

her to say what Bentrick had told her upon the subject, it
45 being hearsay; to which action of the court the caveators then and there duly excepted.

The witness further testified that, after the death of Mary J. Brown, the testator expressed the belief that his daughters had caused her death by driving her away from the house.

That the witness had seen the testator almost every day during his last illness, which lasted about six weeks.

On cross examination, the witness stated that her father was a passionate and an obstinate man.

That Dr. Hazen on East Capitol street was his family physician; that Dr. Hazen attended him in June 1900.

She was married in September 1880 and was not a member of the household after that; but through the winter season she lived in the city: made it a point to go nearly daily to her father's house.

The last time she saw father prior to his taking sick was in December 1900, at the cemetery, at the funeral of her niece Lizzie D. Brown: she lived at his house from infancy up: he had adopted her: she was at the time of her death 5 or 6 years old: she came to the house after Mary Jane's death: she had been living with her mother in the same square: she was a daughter of her brother Martin, who died in June 1898.

Dr. Hazen attended Mary Jane when she was ill: her cousin Mrs. Scott and her daughter Bessie, nursed her.

46 And the caveators, further to maintain the issues on their part joined, called as a witness one ISABELLE F. CHAMPION, who testified as follows:

That she was a daughter of the testator; that her residence is in Dayton, Ohio, where she has lived for 15 years; that she was in Washington at the time of her mother's death and remained from April to September, living in the testator's house; that she was in Washington during the last illness of the testator, and stayed at his house from the latter part of March until his death in the following May; and that, during that time she assisted in caring for the testator. When she arrived he was not in bed; was unable to lie down. That at that time Mrs. Martha W. Mink and Almira Brown and the nurse were present.

The witness was then asked the following question, referring to the testator:

"Did you observe any peculiarities in his words or conduct?"

To which question counsel for the caveatee objected.

"The COURT: It is too remote from the time of making the will. Under the state of facts so far developed I do not think it would be material at all.

If you can show that he was of unsound mind before the making of the will and afterwards, you may have some ground for offering this testimony, but so far you have not been able to show that he was not of sound mind."

"Mr. KEIGWIN: We have shown some peculiarities which are

circumstances to go to the jury on that question. We show
47 that these things existed in the spring of 1900. Now we propose to show that the same kind of peculiarities still obtained nine or ten months later, just before he died.

The COURT: What kind of peculiarities is it you propose to show?

Mr. KEIGWIN: The same kind of peculiarities that Mrs. Stant testified to.

The COURT: I will exclude it then.

Mr. KEIGWIN: We will reserve an exception."

She then testified that her father had heart trouble and that she only knew the cause of his death from the physician's stand-point.

Thereupon the witness was asked the following question:

"Will you state what was the conduct of Mrs. Mink during her father's last illness, so far as you had opportunity to observe it?"

To which question the caveatee objected.

The COURT: What do you expect to show as to her conduct previous to that?

Mr. BROWN: So far as this witness is concerned, she did not go there until shortly before her father's death. I want to develop what I can, so far as she observed the conduct of this party.

Mr. MATTINGLY: They can recall her if her testimony becomes material.

The COURT: It looks to me from the standpoint of the present will, that it is entirely immaterial.

Mr. KEIGWIN: Do I understand your honor to rule that we cannot show that Mrs. Mink exercised any undue influence on
48 the testator?

The COURT: No; I do not rule anything of that kind. But now you are undertaking to show what her conduct was at the time her father was sick, and just before he died, long after this will was made. I say that is not material.

Mr. KEIGWIN: Can we not show that she used her influence to effect the making of this codicil, and that she continued that influence?

The COURT: If you show that she used that influence it is not necessary to show any influence afterward.

Mr. KEIGWIN: We want to show that this influence was in operation up to the time of the testator's death.

The COURT: You had better show such influence first. I will not let you show it now. If you have any case of that kind make some showing, because this is entirely immaterial unless you do make some showing.

Mr. KEIGWIN: We reserve an exception.

Upon cross-examination the witness stated that she had no children.

Thereupon the caveators, further to maintain the issues on their part joined, called as a witness ANNIE E. EDMUNDS, who testified:

That she was the daughter of the testator, a widow and had five children; that in December, 1899, upon the invitation of the testator, she had gone with her children to live with him; that the house was then in charge of the testator's daughter, Almira Brown. When she arrived there were living with her father Almira Brown, Mary J. Brown, Thomas Bentrick and a little grandchild, Elizabeth D. Brown. That the witness and her children were received
49 kindly by the testator and continued to be treated kindly by him until the trouble with Mary J. Brown in May, 1900.

The witness was then asked this question:

"Just state the circumstances under which you and *and* the children left the house?"

To which the witness answered that on or about May 22, 1900, at about four o'clock in the morning the witness went to the bath-room and found it locked. The witness proceeded to say:

"Yes, sir; and the door was locked. I left it and returned again in about ten minutes, I suppose, as near as I could recollect——

Mr. MATTINGLY: I object to this.

The COURT: Come right down to the point as to what was the occasion of their leaving.

The WITNESS: That is what was the occasion.

Mr. BROWN: We believe we are entitled to show the relations between George Brown and Mary J. Brown.

Mr. MATTINGLY: In view of that statement, as the matter has already been ruled upon, I renew the objection.

Mr. BROWN: Mary J. Brown is the party charged in the caveat with having used the undue influence. We have submitted authorities upon that point.

The COURT: You have not submitted any authorities yet to the effect that this evidence would be competent.

Mr. KEIGWIN: We have submitted the text-book authority of the encyclopedia. I happen to have another case in Gill and Johnson which seems directly to bear upon this point. This was also
50 a case in which the suspicion of undue influence rested upon the party.

After argument.

The COURT: You want show what occurred at the time this fuss took place.

Mr. KEIGWIN: Yes, sir; we wish to show the character and gravity of the fuss.

The COURT: Ask this witness what occurred at that time.

Mr. KEIGWIN: We wish to show the character of the relations between the grandfather and Mary J. Brown.

The COURT: That is an entirely different thing.

After further argument.

Mr. MATTINGLY: I submit that no authority can be found to establish that they are entitled to show that influence was exercised by somebody over the testator, unless it is influence which operated at the time of the execution of the will. That is the whole trouble here.

The COURT: It is such influence as would operate to make the testator write the will in the way he did, and not influence upon some collateral matter.

Mr. KEIGWIN: This offer is to show that this influence existed down to sixteen days before the date of the will, and I submit that it must be an exceptional case when any closer connection between the will and the influence can be shown. We offer to show that the relations between the testator and this Mary J. Brown were of such a character as would influence a man and would constitute undue influence upon the mind of that man, especially a man who was old and of failing faculties, and we propose to show that the testator was in a failing condition of mind and memory at that time.

51 The COURT: Have you any other point in the case except that? I have said I would rule against you if I rule at all upon that question now. I have suggested that you go on with the rest of the case, and the final disposition of that question may wait a little while. If you have no other evidence I will dispose of it now, and dispose of it against you.

Mr. KEIGWIN: Then I understand that our question is overruled.

The COURT: It is overruled.

Mr. KEIGWIN: I take an exception.

Thereupon the caveators, further to maintain the issues on their part joined, called as a witness one EDWARD L. CLAGETT, who testified:

By Mr. BROWN:

Q. Mr. Clagett, did you know the late George Brown? A. Yes, sir; I rented the house where I live in from him, sir.

Q. When did you first become acquainted with him? A. Let me see, I will have to think a while about that, because if I had thought of it I could have brought the receipts up and could have told right away. It has been about three years, as near as I can come at it. It was about three years from last September, the last of August or the first of September.

Q. Where was this house located that you rented from him? A. Right adjoining his, on Seventh street, No. 421 Seventh street.

Q. Did you live there adjoining him until the time of his
52 death? A. I did, sir; and still live there.

Q. How frequently would you see him and talk with him? A. When the weather was warm I would see him every evening. I scarcely passed an evening but what I would see him. In the winter time, of course, it was different. I didn't go into his house; but in warm weather, when he was sitting out there, and I was sit-

ting out front, I would go and see how the old gentleman was and talk with him.

Q. Did you ever talk with him on the subject of his children? A. No, sir, not to put it that way, I can't say I talked with him on the subject of his children; but he has talked with me on the subject of his children. I wouldn't dare approach a man on the subject of his children, sir.

Q. Tell the court and jury how he would talk on that subject. A. He never spoke anything to me about his children until after this disturbance occurred.

Q. Go ahead.

Mr. MATTINGLY: This is to show his condition of mind, I suppose.

The COURT: I suppose that is all.

The WITNESS: Do you wish me to commence at the disturbance, or do you wish me to commence at what he told me himself?

By Mr. BROWN:

Q. You may commence at the disturbance.

The COURT: State what you know about it yourself, and not what anybody told you.

The WITNESS: I don't tell what people told me when I am in court.

53 By Mr. BROWN:

Q. Go on and state it. A. Mr. Brown never mentioned a word to me, of my knowledge, of his family affairs, until this disturbance occurred. When this disturbance occurred—as I say, I can't tell the day, nor the date, nor the month, but it was in warm weather. I had gone to bed, and I generally go to bed about nine o'clock as I have to go to work. I was awakened up by the disturbance in Mr. Brown's. My windows was up, and I think it must have been in May, because the weather was warm. As I say, I can't tell what month it was, but the weather was warm. There was a disturbance in there, and my wife pushed me. She heard the disturbance before I did, for I was asleep. Of course I couldn't help from listening. It seems as if Mrs. Stant—I couldn't understand what she said except when she said to him: "All right, father, you are a gentleman." But previous to this, it seems to me that she was talking with him and trying to tell him the wrong in the life he was living, in having improper relations with his granddaughter.

The COURT: Don't tell anything but what you heard.

The WITNESS: The reason I mention this was that it was told me afterwards. I was not mentioning anything except what I heard and what was told me by Mr. Brown himself.

Mr. MATTINGLY: You cannot state what was told to you by other people.

The WITNESS: No, sir; I am not speaking about anything that was told to me except by Mr. Brown himself, and if my evidence

can't be told about what Mr. Brown told me I want the court to shut me up before I go any further.

54 The COURT: You just state what Mr. Brown said to you.

The WITNESS: Can I tell what Mrs. Stant said and what Mr. Brown said in this fuss.

The COURT: Did you hear it?

The WITNESS: I heard it.

The COURT: Did you hear Mr. Brown?

The WITNESS: I heard it sir. Mr. Brown says to Mrs. Stant, he says, and Miss Laura and Miss Annie Edmunds: "You are a parcel of God-damned thieves, horse thieves, conspirators and rubber-necks." Mrs. Stant says to her father, to my remembrance: "Father, you are a gentleman." I never knew what the trouble was until Mr. Brown told me himself, when Miss Elmira and Mrs. Edmunds were going to leave the place, and had gone out to look for a place to go to. I was coming down the street and I passed Mr. Brown, who was in his yard. He says: "Mr. Claggett I want to see you a moment." "All right, Mr. Brown," I said. He says: "In my passing through the house to day I found a letter laying on the table, and it was from Mrs. Stant, and in that letter she requested my daughter, Miss Elmira, to move what things they had into your house, and I want to know if you will allow it." Says I: "Mr. Brown, I thought Mrs. Stant thought more of me than to think I would allow anything like that." Says I: "No, sir." Says I: "Nothing shall come into my house without your knowledge. If I can favor them and favor you I would do it; but I think as much of the one as of the other." He goes on to say to me: "I intended my children should have all that I have when I died, but now, by his God, he didn't intend one of them to have a God damned cent, and intended to change his will, and he intended to clinch

55 it. He didn't care a damn if it went to the dogs, so they didn't get any. Now, gentlemen, that's what he told me, and I am sorry to be here to tell it. I have no interest one way or the other.

By Mr. BROWN:

Q. How did he look; what was his appearance when he was talking? A. Well, sir, he looked like as wild a man as I ever saw. He was nervous, his lips were purple, and he shook like an aspen.

Q. Did you ever talk with him on any other occasion about his children? A. No, sir; that's the only time I ever talked with him about his children. I have heard him and some of his other children talking; but I never had any conversation with him about his children. That's the only thing he ever approached me about it, and I am sorry he did it then, because I didn't want to know anything about it and didn't want to be drawn into it. I loved Mr. Brown, and, as far as his children are concerned, that I have been acquainted with, I like them very well. They treated me right, and I have nothing against any of them.

Q. Do you remember the time of the fire? A. Yes, sir.

Q. At Mr. Brown's? A. Yes, sir.

Q. Did you observe Mr. Brown then? A. Yes, sir. Mr. Brown had to take quarters in my house. I gave him a room there and took care of him.

56 Q. Tell how he acted on that occasion? A. He acted on that occasion—he was almost prostrated, and they had to pick him up and carry him into the house. He was nervous. The fire was next to me. I suppose the alley is not more than six or eight feet wide, and of course I was hurrying my things downstairs; but as soon as the engine got there and put the fire out I saw there was no danger to my house, and of course *of* my next object was to look after Mr. Brown. I had heard that he had moved down and was outdoors below me. I got my two boarders to go down there and bring him into the house, and I fixed up a bed and put him in it, in the back parlor.

Q. How did he act? A. He didn't seem to have any mind at all that night. I couldn't see that he had any mind at all that night.

Q. What sort of a fire was that; was it much of a fire or a slight disturbance? A. Well, it was a fire in his bathroom, and the flame came out through the window. After the engines got there they soon put it out.

Q. Did it do any damage? A. I suppose some three or four hundred dollars' damage, probably five hundred dollars; I don.t know. I never inquired into his business. I would suppose it did at least that much damage. In fact I think the carpenter that repaired the work told me it was some three or four or five hundred dollars.

The COURT: Now you are telling what somebody else told you.

The WITNESS: Yes, so far as that is concerned.

The COURT: That is not evidence.

The WITNESS: Well, that is all right. I should say about
57 three or four or five hundred dollars' damage. I want you to set me down when I go beyond the bounds.

By Mr. BROWN:

Q. Now, Mr. Claggett, did you notice anything peculiar in Mr. Brown, in any other conversation you may have had with him? A. I did, sir. I want to state, in this case, that when the fire occurred and he was in my house, Mrs. Stant and Miss Elmira were in there attending to him all night. I suppose you may call me down on that. I say they were there all night. I could hear them passing backward and forward getting ice, down in the kitchen, and I saw Mrs. Stant the next morning, when I got up to go to work. I saw Mrs. Stant with her father, and she was there all night.

Q. I asked if you noticed, in any other conversations, anything peculiar about Mr. Brown? A. Yes, sir; I should say they were peculiar. I don't know whether the court would or not.

Q. State what they were? A. I heard him have a conversation there, after the funeral, with his eldest son.

Q. State what was said? A. Well, I will state that. I came in, as I generally do, and went into the bath-room to wash myself. His bathroom was just opposite to my bathroom, and I heard Mr. Brown's son talking with him, and he says to him: "Father," he says, "why is it that when you come to Philadelphia, you don't come to see me?" He says: "I will be glad to see you. It is not on account of your property that you have that I have asked you to come to see me." He said: "I have worked for myself ever since I have been large enough to work, and why is it you
58 don't come to see me?" Mr. Brown said "On account of that God-damned bitch of a wife of yours."

Q. Was he a passionate man? A. Yes, sir; and his son never said one unkind word to him. I think that was something for a man to take. I wouldn't take it from my father, as much as I love my father.

Q. What was his temper, as to whether he was passionate? A. He was a very passionate man; yes, sir—he was passionate, although I got along with him very well. I had no fault to find with Mr. Brown, so far as my business relations with him went. I had no fault to find with him.

Q. Did you ever have any hard words with him? A. No, sir; I wouldn't allow myself to have hard words with him. He was never the same man after this disturbance with his family about this affair. That excited him, and he was not the same man by any means that he was before that. He always treated me civil, but after that I went into his yard one evening and opened the gate and took hold of the gate with the wrong hand, and he ripped out at me with an oath and said: "You're not going to pull my gate off the hinges." He said: "If you are coming in, come in; but don't pull the gate off the *the* hinges." I paid no attention to that at all. I never expected to be heard in court to say anything about that.

Q. What is your opinion as to his mental condition.

Mr. MATTINGLY: I object.

The COURT: He has not stated anything yet upon which to base an opinion of that character which should go to the jury, as to his mental condition.

Mr. BROWN: We conceive that if a man has known a man
59 for three or four years and has seen him frequently, and been intimate in his relations with him, under the law he has the right to express an opinion.

The COURT: If he details anything that he has done different from what a rational man would do, he could express an opinion. He says that this man was a very passionate man and all that he has indicated is that the man was in a rage about something, and that one night he was excited about a fire, and was exhausted.

The WITNESS: He said, as I stated a while ago, that he had made up his mind to make his will and that he was going to clinch it, and he didn't give a damn who got it so that his children didn't get it.

By the COURT:

Q. He was always a passionate man, so far as you know? A. So far as I know he was quick tempered.

Q. And a pretty profane man in his talk? A. Yes, sir; he was.

By Mr. BROWN:

Q. I would like to ask you one other question. A. What is it, sir?

Q. Did you ever see Mr. Brown make any kind of an attack upon any of his children? A. Yes, sir.

Q. Please tell us about that? A. That was the night that Miss Elmira and Mrs. Stant and Mrs. Edmunds had that talk with him about these improper relations with his granddaughter. What Miss Elmira said, I knew it was her talking because I knew her voice.

She talked very low, but I couldn't understand what she said.
60 Mr. Brown was excited and talked very loud. He grabbed up a fork off the table and he says, by his God, if you repeat that again, I'll kill you.

By Mr. MATTINGLY:

Q. You were in your own house? A. Yes, sir.

Q. How do you know he grabbed up a fork? A. I saw him, sir, as I see you today, sir. I don't say nothing but what is so. I don't come here to take a false oath.

Q. I am not intimating that you did. A. If you can pin me up, do it; but I don't come here to take a false oath.

The COURT: Answer the questions and stop putting in so many speeches of your own.

A. All right, sir; but if the lawyer puts them to me I am as good as any other man.

By Mr. BROWN:

Q. At what time in the day was this? A. It was at night, sir.

Mr. MATTINGLY: He said it was nine o'clock at night.

The WITNESS: I couldn't tell you what the hour was, but I had gone to bed, and I didn't go to bed until about nine o'clock.

By Mr. BROWN:

Q. Were there lights in Mr. Brown's house? A. Yes, sir; no lights in mine, but lights in his.

Q. Tell the court and jury how you could see that. A. I said a while ago that the house is not more than five or six feet, at
61 the farthest, from his. There is a small alley there. My windows was up and his blinds were open, and his dining room was right opposite my bedroom, because my bedroom was over my dining-room.

Q. And all you had to do was to look right into his dining room? A. I couldn't help seeing it. I started to get up and go down

there when he did that, to stop this, as much in behalf of Mr. Brown as of the children, but my wife stopped me, and she said: "Don't you go, there are three of them there and they can stop him from doing any damage." I didn't want to see Mr. Brown get into any trouble. I was a friend of Mr. Brown's.

Q. How long do I understand that you lived there as a neighbor of Mr. Brown's? A. I have been there, as I told you, for about three years last September. That would have made it about 1899 when I went there, wouldn't it. I didn't bring the receipt as I told you. I can only illustrate it in this way. The first year I went there I moved there the first of September, and that year I bought coal from Mr. Dunn.

Q. We do not care about that. A. If you don't want me to illustrate and tell you about how long I have been there—I can bring the receipts and tell you.

Q. Tell me how this attack on his daughter Almira ended? A. Well, I don't know as I can tell you the final result of it.

Q Did you go downstairs? A. No, sir; I didn't go downstairs.

The final result was that she had to move from there. He
62 wouldn't give her anything to eat.

Q. That is all you saw at that time? A. That is all I saw at the time; but I know they had to move from there, and he wouldn't give them anything to eat. He boarded at the second neighbor's from me.

Q. When Mr. Brown took up that fork what did you hear him say to his daughter Almira? A. I told you what I heard him say once. When he took up this fork I told you what I heard him say. I have already told that.

Q. Tell it again. A. Yes, sir; certainly. When he took up the fork Miss Almira said something which I couldn't understand. He grabbed up a fork off the table and says: "By God, if you say that again I will kill you, I will murder you on the spot—in your tracks." That was the time I was going to get up and go in and pacify him. I didn't want to see the old gentleman get into any trouble.

The COURT: Now you are volunteering a good deal again. Just answer the question and do not make so many speeches.

The WITNESS: Very well.

By Mr. BROWN:

Q. Now, Mr. Claggett, I will ask you again, as the result of your observation of Mr. Brown, what would you say as to his mental condition?

Mr. MATTINGLY: I object for the same reason.

The COURT: I do not see any foundation for it.

Mr. BROWN: We take an exception.

The COURT: I do not think that it is competent for him to
63 give his opinion. I do not think he has stated facts from which it would be competent for him to judge of his mental

condition. In order to make his opinion competent he must state circumstances from which the jury could form an opinion as to whether the man was insane.

By Mr. BROWN:

Q. Have you had any experience in treating insane people? A. Yes, sir.

Q. Will you state what it has been? A. As far as my experience goes with Mr. Brown—I have been over to the asylum there for nearly seven years.

By Mr. MATTINGLY:

Q. In what capacity? A. As an attendant, sir. I was a nurse.

By Mr. BROWN:

Q. In what asylum? A. In St. Elizabeth's, sir.

Q. What were your duties there? A. My duties were to see after the patients, to see that they were well cared for, and not abused, or to carry out the doctors' instructions. Dr. Godding, on one occasion, came around there and told me that he was writing up a book——

Q. Never mind about that. A. Then, of course, I don't know how to bring it in.

The COURT: Don't bring it in. The lawyers will have you bring in what they want.

A. Well, I am sixty-seven years old, and this is the first time I ever was in court as a witness, and I am very sorry I have
64 been here today. I wish I had died before I have been here today.

By Mr. BROWN:

Q. I would like to ask that same question again.

The COURT: I will overrule it.

Mr. BROWN: We take an exception.

Cross examination.

By Mr. MATTINGLY:

Q. I understand that you rented your house from Mr. Brown? A. Yes, sir. Right next door to him, sir.

Q. To whom did you pay rent? A. To Mr. Brown, sir.

Q. And you continued to pay rent to him until his last illness I presume? A. Until just about a month or so before he died; when he told me to pay it to Mrs. Mink, his daughter.

Q. You paid the rent to him during that period, every month? A. Yes, sir; the first day of every month, unless it came on Sunday.

Q. You spoke about a fire at his house? A. Yes, sir.

Q. Was that before or after the disturbance in the family? A. The fire was before the disturbance.

Q. And after this disturbance you saw Mr. Brown frequently, I suppose? A. Yes, sir.

Q. And continued to see him frequently up to the time
65 that he was confined to his bed? A. Yes, sir; and when he was sick I was in there every day to see him, and sometimes twice a day, too.

Q. At the time of this conversation you overheard, on the night of the disturbance, you were in your bedroom upstairs? A. Yes, sir.

Q. The disturbance took place, as I understood you, in Mr. Brown's dining-room, downstairs in his house? A. Yes, sir; which is opposite mine.

Q. And you heard what transpired, so far as you have related it? A. Yes, sir; and saw.

Redirect examination.

By Mr. BROWN:

Q. Was this in the summer time? A. I can't say it was in the summer time, but it was warm weather. I couldn't name the month. It was warm weather. My windows were up, and my windows wouldn't have been up unless it had been warm weather.

And the caveators, further to maintain the issues on their part joined, called as a witness one MADISON M. MAY, who testified:

That his place of business, during the testator's life-time, was right around the corner from the testator's residence; that he knew the testator very well for about ten years before his death and saw him almost every day; and he had frequent conversations with the testator.

The witness was then asked:

66 Q. What was his physical condition in the last two or three years of his life? A. Well, along about 1900 or a little before that he didn't seem to be as strong in mind as he did before. He had a good deal of trouble one way and the other. He seemed to take a good deal of trouble. Every little thing seemed to annoy him. He was bothered a good deal one way and the other. We got to talking about wills and he asked me what I would do and what I had done. I told him. He was opposed, for a long time, to making a will at all. He said that the law made a good enough will for him, in the position he was fixed for life, and that he couldn't come to any final conclusion. So we talked about that along in the fall and winter. Along some time in the winter we had a talk, and he made up his mind, maybe in December—he made up his mind that he would not make a will at all, but that he would let the will go. He was not really in shape to make a will. I don't know whether this sounds sensible or not. He had a daughter living there with him with four little girls, I think, and he couldn't get along

with them. He told me that it was too expensive for him to keep those girls. He told me that he couldn't have them about the house any longer. One morning they started away. I was an eye-witness to this. The mother of the little girls went up and took the street-car right in front of there, and I watched them going. I seen them going, although I wasn't acquainted with the mother or the children. I never was much acquainted with any of the women. So I seen them going up there, and I went down that afternoon and he was a good deal disturbed, a great deal, and didn't know hardly
67 what to make of himself. I talked to him like we generally talked, and he seemed to talk kind of easy, but once in a while he would fire up. We talked about them going away and I asked him whether they had any place to go. He said he didn't know whether they had any place in the world to go or not. He didn't talk just as pleasant as he might have talked, but then, of course, he was probably feeling bad. We talked the matter over, and then I had heard—can I say that she had gone to some home with her children?

Mr. MATTINGLY: Never mind about what you heard.

The WITNESS: I asked him about that, and he said he didn't know where she had gone, and he emphasized it a little rough; but that he couldn't take care of them any longer and didn't care what became of them. So that settled that. Whenever he would kind of get off, I would change the subject. I didn't want him to get mad at me, because I had seen that when he would get mad he would lose his head entirely. I didn't want him to see that I was a little on the opposite side, so I just stopped and we talked about other things. Finally he told me——

Q. Talk a little louder. A. He then, a few days after that, told me that he found a letter that his daughter had got there from some gentleman, and he thought she was going to marry this gentleman. He seemed to be put out a good deal about that. He had either found the letter some place about the house or it had been mislaid or something of that kind.

Mr. MATTINGLY: Is this what he told you?

A. Yes: he didn't like that. He said she had promised
68 him she would never marry again. Then, in another conversation, he said that if she married that foreigner he never would give her a cent, and that he would not have that man to spend his money that he had earned hard and done it by saving. He said he had earned his money by saving. So we talked the matter over, and the next day he told me that his daughter that lived there didn't like him to talk to me out there on any business.

Q. That was Mrs. Mink? A. Yes, sir; to talk on any business of that kind, and he said we would have to be very careful about how we talked there, because, he said, if she should leave him he would be in bad shape. He said he didn't know what to do. He said if she should leave him he didn't know where he would go.

Q. He did not know where he would go? A. No; and he didn't

seem to be at all capable of attending to his own business at that time.

By Mr. MATTINGLY:

Q. What is that? A. He didn't seem as though he was in his right mind to transact any business whatever.

Mr. MATTINGLY: I object to that and move to strike it out.

The COURT: How are you stating that?

A. I am stating that from what he said himself, for he said in making a will that the law made a good will.

Q. What did he say to you about not being able to transact any business? A. He said that he was going to make a will, that he had thought of it, and we had talked the matter over about
69 how he was going to make it. I helped him to come to the point and he looked that matter over thoroughly, and then he made up his mind, at one time, that he would not make any will. Then when I would come and talk with him again, after that, he had made a will probably along in the winter some time. He said that he had made a will and that he believed he would destroy that will, that it was not right, and would let the law make a will. I told him I thought the law made a very good will where people could not agree themselves.

The COURT: Were you trying to persuade him not to make a will?

A. No, sir; I wanted him to make a will the same——

Q. The same as you had made? A. Yes, sir; something like that. I wanted him to settle the thing right away. I bought a large plantation and I gave that to my son——

The COURT: You do not tell me yet anything he said.

A. I am just telling you what he said to me. Then he said what he would do. I couldn't tell that part without telling the other part. It makes it awkward. He said that he was sorry he made the will, and then afterwards he told me that he was going to change the will, but what he changed it to I don't know. From the time that fire occurred I don't think that Mr. Brown——

Mr. MATTINGLY: I object.

Mr. BROWN: We want the witness to answer.

The COURT: He has not stated anything to entitle him to an opinion on that subject. He can state facts,—but cannot state conclusions, and if he states them the court will strike them all
70 out. If you have any evidence to produce that is competent evidence, produce it pretty soon or I will take this case from the jury half-way tried. I will not sit here and listen to any more evidence of this kind, unless you have got something which is competent.

Mr. BROWN: We except to that. If your honor desires to take the case from the jury when it is half tried, why you may do so, and we take an exception.

The COURT: I am taking this testimony now, and I will strike out any opinion he has expressed as to the competency of this man, so far as his testamentary capacity is concerned; for it is not based upon any fact that gives him the right to state an opinion.

Mr. BROWN: We except to the striking out of his testimony.

For the purpose of completing our exception I would like to put the same question to the witness, which we assume the court will not allow to be answered.

By Mr. BROWN:

Q. I want to ask you what, as the result of your observation of Mr. Brown and your conversations with him, and your knowledge of him, is your opinion of his mental capacity at the time when this will was made in July, 1900?

Mr. MATTINGLY: I object.

The COURT: I sustain the objection.

Mr. BROWN: We take an exception.

By Mr. BROWN:

Q. I would like to ask you for your judgment as to whether Mr. Brown was capable of making a valid will at that time in July?

71 Mr. MATTINGLY: Objected to.

The COURT: I sustain the objection.

Mr. BROWN: We take an exception.

And the caveators, further to maintain the issues on their part joined, recalled as a witness ANNIE E. EDMUNDS, who testified:

That she lived in the house of the testator with the testator and Mary J. Brown from December 19, 1899, until June 26, 1900. She was then asked:

"What was the conduct of your father toward Mary J. Brown, and what was Mary J. Brown's conduct toward your father?"

To which question the caveatee objected, and the objection was sustained by the court; to which action of the court the caveators then and there duly excepted.

Thereupon the witness was asked the following question:

"What, if anything, was ever said by your father to you and the other children as to Mary J. Brown, or any suspicions he may have had about the rest of you and your relations with her?"

Whereupon ensued the following:

Mr. MATTINGLY: I object.

The COURT: Is the purpose of this to show mental incapacity of Mr. Brown to make a will?

Mr. BROWN: Yes.

The COURT: Is that the only purpose?

Mr. BROWN: It is the purpose to show that he had some delusion put into his head by certain parties.

The COURT: She may answer that for that purpose and that alone.

The WITNESS: Well, she had plenty of influence over him.

The COURT: You are not answering the question at all.
72 The question asked for declarations that your father made to you.

The WITNESS: Why I have heard her and father talking several times, when she would be trying to put him against me and my children. The night of the fire she wanted to make him believe that my children had set it on fire.

By Mr. BROWN:

Q. What did she say about that? A. She said she thought Ruth Edmunds had dropped a match in the bathroom in lighting the gas, when she hadn't been in the bathroom. He believed, up to the time he died, that my children set it on fire.

Mr. MATTINGLY: I move to strike that out.

The COURT: All that should go out.

Mr. BROWN: We take an exception.

The COURT: She is undertaking to state something that her father believed.

The WITNESS: No, sir; he said so. He told me himself that he thought my daughter Ruth had lit the gas and dropped the match and it had ignited some clothing.

The witness further testified that, at the funeral of Mary J. Brown, the testator had called her a murderer, and declared that he would not put it past her to murder Mary J. Brown; that he was very angry, hit the head of the coffin and nearly upset it, and went on terrible; that before the death of Mary J. Brown the testator had kept her in a locked room and would not allow his daughters to enter or to see her; and that the testator had refused to allow the witness to mix milk punches for him, on the ground, as he
73 stated, that the witness might poison him.

That Mrs. Martha Mink, another daughter of the testator, came to the testator's house on July 6, 1900, the day after Mary J. Brown died; that the relations between Mary J. Brown and Mrs. Mink had always been very affectionate, and that Mrs. Mink partly raised Mary J. Brown; that Mary J. Brown's mother died when she was two years old and Martha Mink took her and kept her for two, three or four years, when her "father married again and he taken her home." That they had, when not living together, maintained correspondence, writing as often as once a week.

Q. How did she refer to Mrs. Mink, in your father's presence? A. Very affectionately, and she persuaded him—she said: Father, I think you ought to do something for Aunt Margaret; she is alone. He says: Martha won't come to me without there is no one else in the house; that he had offered her a home, and she wouldn't come.

The witness further testified that, prior to the death of Mary J. Brown, the testator's attitude towards Mrs. Mink had been quite

cool; and that he had refused to lend her money when she was in need and asked for assistance, and had declared with an oath that he would not send her a cent.

The witness was then asked the following questions:

"What, if any influence did Mary J. Brown have over George Brown, so far as you observed?"

"Do you know of any attempt on the part of Mary J. Brown to gain any benefit from the influence she had over your father, to make a will in any particular way?"

To each of which questions the caveatee objected, and to each question the objection was sustained by the court; to which
74 action of the court in each case the caveators duly excepted.

And the caveators, further to maintain the issues on their part joined, called as a witness one SAMUEL BROWN, who testified:

That he was a son of the testator and one of the four favored in the will; that Martha Mink lived with the witness in Philadelphia before the death of Mary J. Brown; that upon the occurrence of that event the testator requested Mrs. Mink to come to him, sending her money for travel; and that witness saw the testator in November 1900, when the latter, with Mrs. Mink, was on a visit to Philadelphia. They stopped at my brother Will's.

Q. What took place there at the house when you visited him? A. Well, he just received me, and that's about all. We had not much conversation.

The witness was then asked:

"What did you think of the testator's mental condition at that time?"

To which question the caveatee objected, and the objection was sustained by the court; to which action of the court the caveators then and there duly excepted.

The witness was then asked:

"Did you have any conversation with Mrs. Mink about your father's will at that time?"

A. Well, I had none, but she had with me.

Mr. MATTINGLY: I object. Mrs. Mink's declarations are not evidence here, no matter what they might be.

75 Mr. KEIGWIN: Mrs. Mink is one of the parties charged with the exercise of undue influence, and these declarations relate to influence which she admitted.

Mr. MATTINGLY: The idea that a testator's will is to be set aside because somebody is willing to testify that somebody else, whether they were living with this party or not, said that she had influence over him and could make him do as she pleased!

The COURT: It is not competent. It is not like a case between two parties. There is here the question of a will, and the parties are not lined up so as to make the declarations of any of them competent in favor of either party. They are all hearsay.

Mr. BROWN: If your honor please, I would like to make a statement of what I expect to prove by this witness, and yet I hardly

like to do it in the presence of the jury. I want it to go on the record.

The COURT: You can take your own course. I am not going to send the jury out unless you have got something different from what you have offered heretofore.

Mr. BROWN: I expect to prove by this witness that on this occasion, when Mr. Brown visited his son in Philadelphia, accompanied by Mrs. Mink, that Mrs. Mink, who is one of the parties charged here with exerting undue influence over George Brown, said to this witness not to take sides with some of his children who had been cut out or left small shares in the estate, and told him that she had fixed him all right, and that he was to get as much as anyone; and
that she told him just how the will was made, and accom-
76 panied it with the statement that she had had it made satis-
factory to herself and she had taken care of him and some other parties; that it was all right, and not to join them in an effort to break the will.

The COURT: That could not bind these other people in any way.

Mr. BROWN: We consider it to be competent on the question of undue influence, that such a statement as this, coming from a party, showing just how the will was made, and stating that she had had it fixed.

The COURT: This was in November, 1900.

Mr. BROWN: Prior to the man's death, while he was in Philadelphia, and in the same year that the will was made.

The COURT: That would not be competent. You may make your offer and have your exception.

Mr. BROWN: We take an exception.

The witness further testified that the testator was not the same man after his wife's death; that he was feeble and tottering, and broke right down in health and constitution; that his mind was feeble, because that he had told witness that, since his wife's death, at times he had not his own mind to do anything, that he was not the same man and that his days were numbered.

The witness further testified that he had come to Washington the day before the testator died and remained until after the funeral. He was then asked:

"Did you have any conversation with Martha *A.* Mink or any other person in regard to this will and the way in which it had
been procured?"

77 To which question the caveatee objected, and the objection was sustained by the court; to which action of the court the caveators then and there duly excepted.

The witness was then asked:

"Did you have any conversation with Martha *W.* Mink after your father's death?"

To which question the caveatee objected. As counsel for the caveators stated that by the answer to this question they expected to prove that, shortly after the testator's funeral, Mrs. Mink had

made to the witness practically the same representations as had been made to him in Philadelphia; that Mrs. Mink assured the witness that he had been fixed, and endeavored to dissuade him from joining with the other children who she thought were dissatisfied.

The court sustained the objection to the question; to which action of the court the caveators then and there duly excepted.

The witness was then asked:

"What, if anything, did you hear Mrs. Mink ever say as to any influence or control she might have had over George Brown?"

To which question the caveatee objected, and the objection was sustained by the court; to which action of the court the caveators then and there duly excepted.

On cross examination witness stated he had two children.

And the caveators, further to maintain the issues on their part joined, called as a witness one WILLIAM BROWN, who testified:

That he was a son of the testator and lived in Philadelphia; that he is one of the four children most favored in the will; that
78 the testator always visited the witness once, and sometimes twice, in each year; that on these occasions the testator stopped at the house of the witness; and that the testator's last visit was in November 1900. The witness was then asked to state if he had noticed anything peculiar in the testator's manner and conduct in November, 1900, and he answered:

"Most generally when he came on, he came to the front part of the house, opened the door and walked in. If the catch was on the door, he would always ring the bell. He always never knocked at the door unless it was locked. He would always open the door and walk in. This Sunday I was sitting there. I expected him, and it was rather late. It was after we had had dinner. Probably it might have been between 1 and 2 o'clock, because I am pretty prompt with my meals. I always have dinner generally between 12 and 1 o'clock and breakfast at 6 o'clock in the morning. Instead of coming to the front part of the house, he came along to the side and came to the back and knocked at the kitchen door. My wife says to me "There is somebody knocking at the back door." I went to the door, and I says "How do you do? Why didn't you come in the front door? It is open." I says "Come in; come in; what's the matter with you?" "Well," he says, "is Almira here?" "Why, no," I says. "Well, where is Almira?" He says "You know dam- well where she is." I says "I don't." I didn't know Almira was in Philadelphia at the time. "Well," he says, "if she is here or any of the damned gang is here, I will not come in. I will never come in your house again." I said "Man, are you crazy? Come in." He came in and sat in the kitchen. I wanted him to go in the dining room and take off his overcoat. No, he wouldn't take off his overcoat. He sat there with his over-
79 coat on. I says "Wife, father has had no lunch. You had better get him a lunch." He says "No, no; I don't want

anything to eat at all." I says "Did you come on alone?" "No," he says "Mrs. Mink come on with me" and he says "She has went"—I think he said to people by the name of Morrison, or some such name as that. I don't know the people—and if I don't meet her down at Morrison's, why she will be here;" so that, you see, if there was any of the other folks there at the house he didn't intend to stay. He intended to meet Mrs. Mink in the city. I says to him "Take off your overcoat. We are going to have lunch in a few minutes for you." He didn't want anything to eat. He began right away—I knew nothing about the suit, the trouble at home at all, because I would correspond once in a while with father, maybe on business or something or another like that. Otherwise I did not. I generally stood aloft of brothers and sisters, to myself. He sat there a while and finally he began to talk to my wife about this trouble, you know. Of course my wife—we had only been married then about one week. I had been a widower for ten or eleven years, but of course I had a housekeeper; and her being a stranger, only married about a week, he begun to tell her of all this trouble. I tried to draw him off of it two or three times. I says "Now, father, get ready and get something to eat." No, he didn't care whether he got anything to eat or not. Then she insisted on him, you know, and he begun to hash over all this here trouble with Mary J. Brown and that he had to get Mrs. Mink to come down, which I was surprised to think that Mrs. Mink was down at the
80 house, because at other times——

Mr. MATTINGLY: No matter about your surprise, Mr. Brown. A. Well, sir he has told me at other times, and I would want him to go out and see Mrs. Mink and he said "No, he didn't want to see her. He didn't want to go and for that reason I didn't want to be mixed up into any dispute or anything else. I let him have his own way, you see. If he felt like going he would go and I never asked him the second time, anything, nor anybody else. I was kind of surprised at him then, and she came up.

By Mr. BROWN:

Q. What do you mean, Mrs. Mink? A. Mrs. Mink came up towards evening. I am pretty positive that she came there that evening or the next day to my house, one or the other. I won't be positive whether it was that night or the next day, but she came up there. I think father remained there that time for probably five or six days, maybe longer. I don't know. I never kept any account of the time.

Q. Did Mrs. Mink stop there with him? A. I couldn't tell. I know she stayed one time, two nights. I don't know which it was, but I would leave the house in the morning generally about a quarter to 6 and go to Philadelphia. I am about ten miles from the center part of the city. It is one of the suburbs of the city.

Q. When you would leave what were you going to say? A. I would leave father home in bed, you see. He never would get up when I came out. We always had supper and breakfast for him.

He most generally slept with me when he was there and he
81 would get to talking on different subjects and I would agree with him, and I wouldn't listen to him any further. I would get up probably and walk out. I told him on two or three occasions, I says, "Father, you talk random and you will get mad at me." He says "There is no use talking to you. You are stubborn and bull-headed like the rest and you wouldn't take any advice." I says "I don't want to listen to clish-clash nor anything else. I don't want to know anything — your troubles; I want to be out of it."

Q. This wife of yours to whom he immediately began to tell all his troubles—did he ever see her before? A. He never seen her before, and it kind of embar-assed me, you know. I had just been married about a week. Well, this was on Sunday and this was on—it wasn't a week. I was only married on Thursday.

The COURT: Never mind all about that. That may be interesting, but we have not time to listen to all this courtship and marriage and the details of it here.

The WITNESS: I am only telling the impropriety of a man talking to a strange person.

The COURT: You have stated the fact. That is all that is necessary.

The WITNESS: Telling all his family trouble, which I had never uttered. She didn't actually know how many brothers or sisters I had.

By Mr. BROWN:

Q. Had your father ever acted this way before? A. Well, he had before yes, sir, after mother died, the time before that he
82 was on. The lady keeping house for me had kept house for me for eight years. He talked to her and he undertook to talk to me on receiving letters from different young girls who wanted to marry him and all such business as that. I says "Father, you are crazy." "Yes," he says "I believe I am going crazy ever since your mother died." He says "Half the time I don't know what I am doing. When he would talk that kind of business I would get up and light a cigar and walk out and let him stay there."

By the COURT:

Q. He was a man who would like to have his own way, was he not? A. Have his own way?

Q. He was a man who liked to have his own way, I say, a man with his own opinion about things? A. Yes, and that was the reason I never had much conversation with him. I am a good deal myself that way.

And the witness further stated that, on the occasion of the testator's last visit to him, the testator was a different man and actually insane on the subject of family affairs.

By Mr. BROWN:

Q. I will ask you if your father was able to go about by himself with safety? A. Well, I don't hardly think he was. I am positive he was not.

The COURT: That is another opinion, Mr. Brown.

The WITNESS: I will state positively then that he was not in November.

83 The COURT: He has already testified now that the last time he came there he came alone. His opinion whether he could go alone or not is entirely outside of the case.

Mr. KEIGWIN: He can state his opinion whether he could safely come there alone.

The COURT: What is it based on? He said he came there alone and came safely.

Mr. BROWN: We take an exception to the refusal of the court to allow him to state.

The COURT: Yes. Please get up something, gentlemen, that has some foundation to it pretty soon. We are trying to get at some merit in this case.

Mr. BROWN: We seem to differ with the court to a considerable extent. We think there is a considerable foundation already.

The COURT: Then come right to it, if you have any competent evidence. That is what the court is here for, to hear competent evidence, but not to hear so much evidence that is not competent, if we can prevent it.

On cross examination the witness stated he had three children.

And the caveators, further to maintain the issues on their part joined, called as a witness one ALMIRA BROWN, who testified:

That she was a daughter of the testator; that after her mother's death she took charge of the testator's house, and that her relations with her father were pleasant until Mary J. Brown came to

84 live at the house. The witness further stated that her relations with Mary J. Brown were at first pleasant, and she was then asked the following question-:

Q. How long did those pleasant relations continue? A. Between who?

Q. Between you and Mary J. Brown? A. Well, for a while it went along all right—a short while. Then I noticed her relations. She was kind of sneaky in things she did. I would come upon her unexpectedly and she would be startled,——

Mr. MATTINGLY: This is the same old thing, your honor, which has been ruled out, and I object.

Mr. BROWN: I cannot hear what the witness says.

A. Whenever I would come in the room she would——

Mr. MATTINGLY: I object to that.

The COURT: You need not state any more of that. That is not evidence.

Mr. BROWN: We take an exception.

The witness was then asked:

"What was the conduct of your father toward Mary J. Brown, and her conduct toward your father when she first came there?"

To which question the caveatee objected, and the objection was sustained by the court; to which action of the court the caveators then and there duly excepted.

The witness further testified:

Q. Did you ever hear Mary J. Brown talk with your father on the subject of his will? A. Of what?

Q. The subject of his will? A. Yes, I have.

85 Mr. MATTINGLY: I object to that, your honor. He made no will during her lifetime.

The COURT: If she heard her father say anything on that subject, I think she might state it.

The WITNESS: Father talked to me several times on his will and he made a number of them to my knowledge. He told me that he had promised her that he would always look after her and provide for her in a number of instances.

Mr. MATTINGLY: He promised Mary Jane?

A. Yes; he had promised her; and the way she stated her father had treated her, he was then thinking of transferring it to her.

Mr. BROWN: Transferring what to her?

A. Her father's share.

Mr. MATTINGLY: Is this competent, your honor?

The COURT: Not at all, but if they think it is material, I will let her state what he said about it. So far it is not material at all.

By Mr. BROWN:

Q. What was said about her getting her father's share? A. She used to talk to him about her father and all and he said "Well, if your father treated you that way he will not be recognized by me."

Q. She talked against her own father? A. She talked directly against her own father in my presence.

Q. That is the George Brown who is cut off, is it not? A.
86 Yes; and she told me herself that—I guess she hadn't been in the house a week——

The COURT: You need not state what she told you. We cannot take time here to listen to all these things that are incompetent.

The witness was then asked:

By Mr. BROWN:

Q. You need not answer this unless the court allows you to. What were you going to say about her declared intentions as influencing your father's will as to the disposition of his property.

Mr. MATTINGLY: I object to that.

The COURT: I sustain the objection.

Mr. BROWN: I take an exception. I want to show by this witness, if your honor please, that shortly after Mary J. Brown came to that house, she began, both by conduct and words, to influence him in the execution of this will.

Mr. MATTINGLY: This is the same proffer, I suppose, you made before, is it not?

Mr. BROWN: And I want to show her conduct towards him.

The COURT: What do you expect to prove? What evidence do you expect to show it by? That is the point about it here.

Mr. BROWN: We expect to show by her actions she endeared herself to the old man in an improper way and prejudiced him against the proper objects of his bounty for the benefit of herself and her successors who had raised her.

The COURT: Suppose she did do that?

Mr. BROWN: In the case of a man in George Brown's condition it would be undue influence in our opinion.

The COURT: Not in the light of other facts in the case so
87 far developed.

Mr. BROWN: That it would not be his will; that by false statements she created a false world and persuaded him to act under that state of mind. It is natural that such a will as this should be made under those circumstances, which was not the will of George Brown. I have asked in a general way what the conduct of one towards the other was, and the court sustained the objection.

The COURT: I think it is wholly immaterial under the law, and there is no need of wasting any time on it.

Mr. BROWN: We except.

The witness further testified that the testator was ailing for years before his death, that he was very feeble, and constantly under the physician's care; that, after the coming of Mary J. Brown, he changed toward the witness and the other members of his family; he was irritable; he would not consult the witness about matters on which he had been accustomed to consult her; he was all the time worried; he told the witness that, unless there was some relief, he could not stand it; he complained that people were constantly nagging him and telling him different things; that his complaint of the witness was that she was trying to keep things from him; that he said, "I hear from other sources that you are not doing like you ought to. If you can't keep house for me as you have always been, I will get somebody else."

The witness furtner testified that Mary J. Brown tried to take the management of the house out of the hands of the witness;
88 and that she told the witness repeatedly that her, the witness' word was nothing in the house.

Mr. MATTINGLY: This is the same old thing, your honor.

The COURT: This is all immaterial and incompetent, that she is giving now.

Mr. KEIGWIN: What is the action of the court?

The COURT: I sustain the objection that is made.

Mr. KEIGWIN: We reserve an exception.

Mr. BROWN: What does your honor strike out?

The COURT: We will strike out all this that Miss Mary Brown told her. It is all incompetent evidence to go to the jury.

Mr. KEIGWIN: There is a good deal there besides what Miss Mary J. Brown told her.

The COURT: I am talking about that particular evidence now. The other evidence as to what her father told her is not competent to prove any facts at all. It is only competent to prove mental capacity, and I understand you do not question his mental capacity at that time. I have not heard any exact date that you fix in that respect.

Mr. BROWN: Yes, we do question his mental capacity.

The COURT: From what time?

*The Court:* From the time of the mother's death, he began to fail.

The COURT: Well, on that point it is competent to consider that testimony, but not to prove any facts of the details of this disturbance or trouble that occurred there in the family.

89 Mr. BROWN: I understand all your honor has ruled out in the testimony of this witness is what she has stated Mary J. Brown said to her.

The COURT: Yes.

Mr. BROWN: To that we except.

Thereupon the witness was asked:

"What was the state of your father's affections toward this Mary J. Brown?"

To which she answered:

"Well, he was more affectionate to her than to any of his children."

Whereupon ensued the following colloquy:

Mr. MATTINGLY: This, I suppose, is a prelude to the same thing again. I object to it.

The COURT: I think under the view I have taken of the law that it is wholly immaterial what his affection was for her. She was dead and gone before this will was made.

Mr. BROWN: If your honor please, before we attempt to develop the point that we want to bring out, counsel objects and the court sustains the objection and prevents us from going ahead. We must in some way get on the record what it is we are going to bring out.

Mr. MATTINGLY: You have it on the record several times.

Mr. BROWN: No; this has not been put on the record, but we put it on the record now. We expect to prove by this witness that Miss Mary J. Brown, by her wiles and arts, ingratiated herself into the affection of her grandfather and prejudiced him against other children by tales and false stories which she would tell, and

90 in carrying out her design she actually sustained improper relations, in coddling the old man.

The COURT: How are you going to prove that?

Mr. BROWN: We are going to prove it.

The COURT: By what Miss Mary Brown said?

Mr. BROWN: By the fact that they were caught in such circumstances, and his other children had to leave the house. That was the occasion of their having to go away, that they insisted upon this Miss Mary J. Brown leaving, and he was so fond of her that they all had to go away on account of her conduct, and she remained.

The COURT: Suppose that is all true. That influence, whatever it was, would stop with the death of Mary J. Brown.

Mr. BROWN: We contend that Mary J. Brown was in correspondence with Martha W. Mink, with whom the father had had nothing to do; that she used her influence to overcome the old gentleman's antipathy to Martha W. Mink, and that Martha W. Mink came here afterwards and took up the state of affairs where it had been left off by Mary J. Brown, and continued to manage the old gentleman in the same way for her own purposes.

The COURT: Make an offer, and I will rule on it.

By Mr. BROWN:

Q. How long was it after Mary J. Brown came to live with your father, before any trouble between yourself and your father took place?

Mr. MATTINGLY: I object.

The COURT: I think it is immaterial. I sustain the objection.

Mr. BROWN: We reserve an exception.

91 By Mr. BROWN:

Q. I will ask you whether or not, after Mary J. Brown came, any ill feeling took place between your father and any of the children in the house?

Mr. MATTINGLY: I object.

The COURT: It has been shown already that there was some ill feeling there, for some cause or other.

Mr. BROWN: Does the court refuse to allow the witness to answer?

The COURT: Yes, sir.

Mr. BROWN: We except.

The witness then testified as follows:

By Mr. BROWN:

Q. I will ask you if any attack was ever made on you while you were in that house, by your father? A. There was.

Q. Will you state the circumstances? A. Well, he was excited over the previous fuss that we had had with regard to this Mary J. Brown. I ordered her from the house and he refused to allow her to go. I insisted upon her going. Finally she left, and I sent her clothes after her. That was on Wednesday. The following Saturday he insisted upon bringing her into the house, and I told him she should not come in, and if she came in I would go. He said: Well then, you go. I said Father, this is my house, my home; I

said: I think if anybody goes she ought to be the one. The house was then mine. He had deeded it to me, and always led me to believe that in his will——

Q. Tell us about how your father acted in the row that
92 took place. A. He brought her into the house and I ordered her out, and he refused to let her go. He shook his finger at me and said that she would remain. I said she should not. She went out. Finally she went out, and he brought her back. Of course one word brought on another, and then he said about what a good girl she was, and the like of that, and how I had acted, and calling me down and upholding her. I told him, I said: Well, father, you can say what you will about her and me, but I was never guilty of such conduct as she has shown here. That is all I said to him, and he made a dash at the table and snatched a fork off the table. His place was set there every day from the first time. We always kept the dining room table set, and his place was set every meal, and he was called to his meals. He grabbed that fork and made a dive at me, and if it hadn't been for my sister, Mrs. Edmunds, I have no doubt he would have stabbed me with it.

Q. What did she do? A. She came in between us, and she said: Hold on, father; don't strike her. I said: Let him strike. I said: I am not afraid of him.

Q. What was his appearance at that time? A. More like a man that was going to have a fit than anything else. His color was green, and he fairly frothed at the mouth. He said to me that he was going to cut my throat. I said: Well, father, you can strike; I am not afraid to die. I said: You are more afraid of the gallows than I am to die, and said: Strike me. I didn't step back, or make any interference whatever. I stood my ground. My sister came in between us and grabbed at his hand that he had the fork in,
93 and he said, Well, she will die before I do if I have to kill her. I said: Oh, I guess not. He said: Well, you will, for treating this girl the way you have treated her.

Q. Was Mary J. Brown present? A. She was.

Q. What did she do; how did she act at the time? A. She talked to him, and told him to think of himself and what would be the consequences, and to come away and let me alone; that I was not fit for him to talk to. She led him off, after a while, into what was then his bedroom. From the time of the fire he had never repaired the upstairs, and it was not fit to live in, and I made his bed in the back parlor. During his illness, from the time of the fire, I had to be ready at hand, and I had a folding bed in the communicating room, in the parlor. She led him in there. Well, he raved and went on something terrible, using language it would not be becoming for me to repeat. He called me everything that he could think of to call me, and he accused me of unbecoming conduct and she agreed with him. She talked with him and tried to quiet him down, but he said that he would not trust me at all. I had always been in the habit of making some hot lemonade for him before he retired, and fixing him medicine at night. That night I went to

fix it for him, but she had went out and bought extra lemons and sugar, previous to that time, and had them in his bedroom. She brought him out into the dining room to make it, and I said to her: You have no need to do that, I have always done it.

Mr. MATTINGLY: I object to going any further with this
94 statement.

The COURT: I sustain the objection.

Mr. BROWN: We take an exception.

The witness was then asked the following question:

By Mr. BROWN:

Q. I will ask you to look at this card and state if you have ever seen it before? A. Yes, sir; this is a card I found in the house. In the summer, in the month of August I went to the country for a month, and in my absence I left this Mary J. Brown in charge of the house, and also a young lady to keep her company. When I returned from the country, in cleaning up the parlor I found this postal card, under the cover of the table. I read it of course. It was a surprise to me and I asked him about it—no, he asked me. He came in and seen I was cleaning up the room and he says: Did you find a postal? I said: Yes, sir.

Q. Who asked you that? A. Father. He said: What did you do with it: I said: I put it away. Well, he says, this is right; you take good care of that; in case anything should happen to me you are the only one that can secure that package, and probably you could not without that card. I asked him what it meant Before I went to the country——

Mr. MATTINGLY: When is this that you are talking about?

A. This was in August. I couldn't tell you the date but it was just at the time of the Grand Army encampment in Philadelphia.

Q. It was after your mother's death? A. Yes; this was
95 just a few months before Mary J. Brown died.

By Mr. KEIGWIN:

Q. Was it after the date of the card? A. It was in 1899.

By Mr. BROWN:

Q. Go ahead and tell us what your father said. A. He asked me for his old will. He said that he had had occasion to make a change in it. I gave it to him, when I first came back. He didn't tell me what was in his will, but he said that he had seen fit to make another one. I never questioned him on his business at all. I thought that what he wanted to tell me he would tell without any questions. This was a total surprise to me. Then after that I asked Mary J. Brown if she knew anything about this and she said: "Why, yes."

Mr. MATTINGLY: I object.

The COURT: That is not evidence. What she told you is not competent evidence to go to the jury.

Mr. BROWN: We except to your honor's ruling.

Now, we should like to read the postal card in evidence.

The COURT: We have not heard anything about what it is yet. There has been no proof about whose handwriting it is or anything about it.

Mr. BROWN: The testimony is that her father asked her whether she had found it.

The COURT: I do not suppose the postal card is competent evidence. That is hearsay also.

Mr. BROWN: I suppose the stenographer can make a note of it, and state that the court refused to allow it to be read.

The COURT: Perhaps Mr. Mattingly would prefer to have
96 it offered.

Mr. MATTINGLY (after inspection): I object to it.

The COURT: That is not proof. There is not a word of proof in it.

Mr. KEIGWIN: If it is not proof we will content ourselves with an exception.

The COURT: It is all hearsay, every word of it.

Mr. KEIGWIN: We offer that for the purpose of showing that in 1899 a will was made by George Brown in favor of his daughter Almira Brown.

The COURT: The objection is that it is not competent proof of anything, and that is the reason it is ruled out.

Mr. KEIGWIN: We offer it as a circumstance tending to show that fact.

*Copy of Postal Card.*

A. V. B. No. —.

Received of George Brown one sealed envelope said to contain the last will and testament of George Brown, to be kept in vault of bank and delivered to A. V. Brown executrix or to recorder.

(Signed) H. V. McKEE, *Cashier.*

Nat. Cap. Bank, Jul- 31, 1899, Wash., D. C.

The witness further testified that on May 26, 1900, there was a final fuss between the testator and his daughters; that in consequence thereof, the witness, her sister, Mrs. Edmunds and Mrs. Edmunds' children were obliged to leave the testator's house; they left June 26; and that Mary J. Brown—she was ill at the time—remained in the house alone with the testator until her death, ten days afterwards.

Q. During the time when Mary J. Brown was at your
97 father's house, were there any communications passing between Mary J. Brown and Mrs. Mink? A. Why, yes.

Mr. MATTINGLY: That is immaterial.

By Mr. BROWN:

Q. I wish you would state what the communications were? A. I didn't read any of the letters, but I only know just what she would write to her.

Mr. MATTINGLY: I object.
The COURT: I sustain the objection.

By Mr. BROWN:

Q. Do you know that there was correspondence between the two? A. I do.
Q. I will ask you if you heard Mary J. Brown talk to your father at all about Mrs. Mink? A. A number of times.
Q. In what terms would she talk about her? A. Well, he did not like it because she would not come on when he wrote for her to come—at least he would have me to write. I did all the family correspondence for him and did for years. He was very much enraged because she would not come.
Q. When was that that he wrote for her? A. That was after her husband's death. He wanted her to come on and he offered her a home there, but she refused it.
Q. In what year was that? A. That was in 1899, I guess, or 1900, and off and on since. Her husband died in 1898, and
98 from 1899 on he was continually writing or getting me to write for her to come on and make her home with us. He wrote her to come on before Mary J. Brown came, and she refused to come. Then after Mary J. Brown came he had me write again.

Mr. MATTINGLY: I object to this.
The COURT: This is all immaterial. There is not a word of this testimony that is material to this issue. I sustain the objection.
Witness was then asked:

By Mr. BROWN:

Q. Do you remember the occasion of the fire at your father's house? A. I do.
Q. Will you tell us about that, and what effect it had upon George Brown?

Mr. MATTINGLY: Unless there is something different from what has already been given in evidence I think it is discretionary with the court as to whether he shall waste time upon it. There is no doubt that he was prostrated at that time, and unless they want to show something further, I do not see any use in it.
The COURT: Do you expect to show anything different?
Mr. BROWN: We expect to show that this Mary J. Brown seized that opportunity to try and induce Mr. Brown to believe that the fire was started by some of the other children.
The COURT: There is no materiality about that.
By Mr. BROWN: And to prejudice him against them.

Mr. MATTINGLY: I object.
99 The COURT: I sustain the objection.
Mr. BROWN: We take an exception.

By Mr. BROWN:

Q. Did you notice any change in the physical and mental condition of your father after your mother's death? A. I did, during her illness and after her death.

Q. Will you state what it was? A. He was oftentimes absent-minded. He would lay his books and papers away and then have me hunt everywhere for them for him. He has told me he couldn't keep track of anything. When he would become worried he would say to me that he would have to stop looking for them, and I would continue looking for them, for him. He would say: I can't allow myself to get worried and worked up; I can't stand it. He was always afraid of his mind, always. He never allowed himself when he could help it, to get into a passion because be said he was afraid. He used to have an idea that his mind would be affected. His grandfather's was and he thought he would go just like his grandfather did, if he became worried. He never allowed himself, when he could help it, to be worried over anything. If he had any trouble of any kind I would have to be in constant attendance on him, giving him medicine and the like of that.

Q. Did you ever hear Mary J. Brown say anything about her influence over George Brown?

Mr. MATTINGLY: I object.
The COURT: The objection is sustained.
Mr. BROWN: We take an exception.

By Mr. BROWN:

100 Q. I will ask you what, if anything, you ever heard Mary J. Brown say about her influence over your father?

Mr. MATTINGLY: Objected to.
The COURT: The objection is sustained.
Mr. BROWN: We take an exception.

By the COURT:

Q. Miss Brown, was Mary J. Brown older or younger than you? A. Younger.

By Mr. MATTINGLY:

Q. How old was she? A. She was in her 22nd year when she died. That is as near as I know.

By Mr. KEIGWIN:

Q. How old was this nephew, Thomas Bentrick? A. He was about 28.

Q. His father and mother were dead? A. His mother was dead.

By Mr. MATTINGLY:

Q. Was he addicted to drink? A. Not as a general thing. He would once in a while.

Q. Your father objected to it, did he not? A. No, sir.

Q. He never objected to Thomas drinking? A. Yes; he objected to his drinking.

Thereupon the caveators, further to maintain the issues on their part joined, called as a witness one LAURA LOUISE RAINEY, who testified:

101 That she had known George Brown in his lifetime; became acquainted with him in February, 1899; and had been very intimate with Mary J. Brown.

Q. Did Mary J. Brown ever talk to you about her influence over her grandfather George Brown?

Mr. MATTINGLY: Objected to.

The COURT: Objection sustained.

Mr. BROWN: We take an exception.

By Mr. BROWN:

Q. Were you present at the house of George Brown on one occasion when he was engaged in preparing a will? A. Yes, sir; I was.

Q. Will you state what took place on that occasion? A. I was passing through the room, and I saw his grand-daughter with her arms around her grandfather, guiding his hand while he was writing a will. Then I passed through into the kitchen, and she told me that the will was made in her favor, cutting her father out entirely.

The COURT: Do not state what Miss Mary J. Brown said to you. That is not evidence in the case. State what you saw there?

A. I came back into the room and he was still writing the will.

By the COURT:

Q. How did you know it was a will he was writing? A. Because he told me so.

102 Q. What did he say? A. I would not have known it of course, but he asked me if I thought he was in his good mind and all right. He said he was going to put it down in the will stating that I said so.

Q. He was writing it himself? A. Yes, sir; he was writing it himself. His grand-daughter was not in the room then.

Q. When was that? A. The latter part of August 1899.

By Mr. BROWN:

Q. What appeared to be his condition at that time? A. He was very excited and nervous.

The caveators, further to maintain the issues on their part joined, called as a witness one MARY J. WEST, who testified that she had been a servant in the house of the testator while Mary J. Brown lived there. The witness was then asked:

"What were the relations, conduct and attitude of George Brown and Mary J. Brown toward each other?"

Whereupon ensued the following colloquy:

Mr. MATTINGLY: I object.
The COURT: I sustain the objection.
Mr. BROWN: We take an exception.

By Mr. BROWN:

Q. Did you see George Brown and this Mary J. Brown in improper——

Mr. MATTINGLY: I submit that that has gone far enough.
Mr. BROWN: Let me finish the question.
103 The COURT: I think you have gone far enough, in that line. You have gotten exception after exception, and I will not take up the time of the court any longer with such offers of testimony, on that line.
Mr. KEIGWIN: We do not want to multiply exceptions on the same point, but we think we have to have exceptions to different specific items that we offer to prove.
The COURT: We will not go into that family history any further.
Mr. BROWN: I started to ask the question and Mr. Mattingly objected before the question was asked.
The COURT: It had gone far enough to indicate what it was.
Mr. BROWN: I want the record to show that I was about to ask this witness about improper relations between them.
The COURT: Very well.

Thereupon the caveators recalled Mrs. ISABELLA CHAMPION for further examination, and she was questioned and she answered as follows:

Q. Mrs. Champion, you were present at the house of George Brown from the time you came here until he died? A. Yes, sir.
Q. Did you have an opportunity of observing the conduct of Mrs. Mink towards George Brown? A. I did.
104 Q. Will you state what that conduct was? A. Well, she endeavored at every opportunity——

Mr. MATTINGLY: I object.
The COURT: Certainly what she has commenced to state is not proper.
Mr. MATTINGLY: It was just before his death, and after the will and codicil were both executed.
Mr. KEIGWIN: Mrs. Mink came there two weeks before this first will was executed.

The COURT: I have ruled that out, and you have got the benefit of an exception to take it to the Court of Appeals, and they will say whether I am right or not. You do not need to spend any further time on that point.

Mr. BROWN: We except to the ruling of the court.

By Mr. BROWN:

Q. Did you ever hear Mrs. Mink refer to Mary J. Brown, so as to keep her memory before your father?

The COURT: Have I not just ruled on this question. I will take some other course, if I cannot stop this. You are sitting here trifling with the court and trifling with the case in this way.

Mr. BROWN: We have no idea of trifling with the court.

The COURT: You still repeat and repeat what I have already ruled upon, for the sake of lumbering up the record and taking up the time of the court.

Mr. BROWN: We take an exception to the remarks of the court and will close our case.

Mr. MATTINGLY: I ask your honor to instruct the jury that under the whole evidence, they must find the issues in favor of the
105 will.

The COURT: There is not evidence enough in this case to warrant the jury in returning a verdict against this will. The most of the evidence has been incompetent and hearsay, and the evidence would not, in my judgment, justify the submission of the case to the jury at all. What little evidence there is, if it had been competent upon the issues here, is not sufficient to sustain a verdict, even if the jury should render one against this will. The execution of the will has been proven. Upon the other three issues, fraud, undue influence and mental capacity, there is not evidence sufficient introduced by the caveators to warrant a verdict against the will, and there is no evidence against the execution of the will. So that, as to the first and last issues, the answer would certainly have to be in favor of the will. As to the second, third and fourth issues, the evidence would not sustain a verdict, so that I will direct the jury to return a verdict, as indicated here, in favor of the will.

Mr. KEIGWIN: It was agreed yesterday that we should make a statement to the stenographer as to our proffer of proof in regard to the relations between the testator and Mary J. Brown.

The COURT: You have made them over and over again and I have ruled on them.

Mr. KEIGWIN: It was arranged that we should make a summarized proffer, but not expecting that we would get through with the case today we have not prepared it, expecting to avail ourselves of the time between now and next Monday to put it in proper form.

106 The COURT: I thought you availed yourself of the privilege of offering the testimony at the time.

Mr. KEIGWIN: No; your honor has ruled out the testimony.

Mr. MATTINGLY: If Mr. Keigwin will submit any statement to

me we may agree upon it. But I want to call the attention of the court to the fact that after that suggestion was made they proceeded on the same line of proof and made a statement of the offer not only once but three times at least, if not oftener, as to what they expected to prove, so that proffer is already in the record.

Mr. KEIGWIN: We have never made any statement of what we expected to prove. We have stated, in connection with certain pieces of evidence, what we expected that evidence to show, but we would like to reserve the privilege of making such a statement, subject to the approval of Mr. Mattingly, and in the case of disagreement between Mr. Mattingly and ourselves, subject to the approval of the court. Do you agree to that Mr. Mattingly?

Mr. MATTINGLY: I want to see the paper. I assume that you will make the statement conform to what you expect the witnesses to swear to.

The COURT: Gentlemen of the jury, you will, in this case, render a verdict supporting the will, and answering these interrogatories as I have indicated in pencil here.

To the direction of the court that the jury return a verdict in favor of the caveatee, the caveators then and there duly excepted.

The foreging is the substance of all the evidence adduced
107 or offered in the case.

All the foregoing proceedings were had, and all the exceptions hereinbefore mentioned were prayed, allowed, taken and noted, before the jury retired to consider of their verdict.

And thereupon the caveators prayed the court, and now pray the court, to sign and seal this their bill of exceptions, to have the same force and effect as if each of the said exceptions were separately and severally set forth in a separate bill of exceptions; and the same is accordingly done, and the court signs and seals this bill of exceptions, to have the force and effect aforesaid, now for them, this the 14th day of May, A. D. 1903.

JOB BARNARD, *Justice.*

O. K.
W. F. M.

(Endorsement: Bill of exceptions. Filed, May 14, 1903, Louis A. Dent, register of wills, D. C., clerk of probate court.)

108 In the Supreme Court of the District of Columbia, Holding a Probate Court.

*In re* The Estate of GEORGE BROWN, Deceased. No. 10379.

It is hereby stipulated and agreed between the parties to the issues framed upon the caveat filed in this cause, through their respective counsel, that the transcript of the record on appeal by the caveators to the Court of Appeals of the District of Columbia, shall be made up as follows:

First. Copy of petition offering for probate and record the certain paper writing, as the last will and testament of George Brown, deceased.

Second. Copy of caveat filed by Almira V. Brown and Ida E. Stant.

Third. Copy of answer of the American Security and Trust Company, executor and trustee to said caveat.

Fourth. Order of court framing issues under said caveat.

Fifth. Memorandum of verdict.

Sixth. Entry of judgment and notation of appeal.

Seventh. Memorandum of appeal bond filed.

Eighth. Memorandum of extension of the term and of the extension of time for filing transcript.

Ninth. The bill of exception and copy of the alleged last will and testament referred to therein.

PERCIVAL M. BROWN,
C. A. KEIGWIN,
*Attorneys for Caveators.*
WM. F. MATTINGLY,
*Att'y for Caveatee.*

5/22/03.

(Endorsement: Stipulation, containing directions for making transcript of record. Filed May 22, 1903. Louis A. Dent, register of wills, D. C., clerk of probate court.)

109 Form No. 94.

Supreme Court of the District of Columbia, Holding a Probate Court.

DISTRICT OF COLUMBIA, *To wit:*

I, John R. Rouzer, deputy register of wills for the District of Columbia, clerk of the probate court, do hereby certify the foregoing pages, numbered from 1 to 108, inclusive, to be true copies of the originals of certain papers on file in the office of the register of wills, clerk of the probate court, in case No. 10379 estate of George Brown, deceased, wherein Ida E. Stant and Almira V. Brown are appellants, and The American Security and Trust Company is appellee, the same constituting a full, true, and correct transcript of record of proceedings had in said cause according to the stipulation of counsel filed therein and made a part hereof.

I further certify, that the bond for appeal, in the penalty of one hundred dollars, was duly filed by said appellants, and approved by said court on the 26th day of February, A. D. 1903.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said probate court, this 27th day of May, A. D. 1903.

[Seal Supreme Court of the District of Columbia, Probate Jurisdiction.]

JOHN R. ROUZER,
*Deputy Register of Wills for the District of Columbia,*
*Clerk of the Probate Court.*

Endorsed on cover: District of Columbia supreme court. No. 1334. Ida E. Stant *et al.*, appellants, *vs.* American Security and Trust Company. Court of Appeals, District of Columbia. Filed Jun- 12, 1903. Robert Willett, clerk.

# In the Court of Appeals

## OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

No. ~~1134~~. 1334

NO. 8 SPECIAL CALENDAR.

IDA STANT AND ALMIRA V. BROWN, APPELLANTS,

*vs.*

AMERICAN SECURITY AND TRUST COMPANY,
APPELLEE.

## BRIEF OF APPELLEE.

WM. F. MATTINGLY,
*Attorney for Cavealee.*

THE LAW REPORTER COMPANY, PRINTERS, WASHINGTON, D. C.

# In the Court of Appeals

## OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1903.

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**No. ~~1134~~. 1334**

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NO 8 SPECIAL CALENDAR

IDA STANT AND ALMIRA V. BROWN, APPELLANTS,

*vs.*

AMERICAN SECURITY AND TRUST COMPANY, APPELLEE.

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## BRIEF OF APPELLEE.

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### Statement of Facts.

The testator, George Brown, died May 2, 1901, 72 years of age. His will was executed July 21, 1900, and a codicil thereto on January 4, 1901. Testator's wife died November 8, 1897. He left surviving him as his sole heirs at law, three sons, five daughters, one granddaughter, being the daughter of a deceased son, and one grandson, being the son of a deceased daughter, viz:

William F. Brown, Samuel T. Brown, George F. Brown, Martha W. Mink, Isabel F. Champion, Ida E. Stant, Annie E. Edmonds, and Almira V. Brown; and Mabel D. Brown, daughter of a deceased son, and Walter C. Bentrick, son of a deceased daughter.

Testator's personal estate was very insignificant, consisting of $200 to his credit in bank, and household furniture of the value of $200.

He was possessed of real estate, the value of which is not shown in the record, but was, in fact, of the value of from $30,000 to $40,000.

By his will, after disposing of his furniture and wearing apparel, he devised all the rest and residue of his estate to the American Security and Trust Company to hold upon the trusts stated in the will, viz:

For Mabel D. Brown and Elizabeth D. Brown, daughters of his deceased son, Martin V. Brown, house No. 2542 Jessup street, Philadelphia.

For Samuel T. Brown, for life, two lots on Tenth near Centre street, Philadelphia; remainder in fee to his children.

To convey to Ida E. Stant lots at Colonial Beach, Virginia.

To his son, George F. Brown, and grandson, Thomas B. Bentrick, he leaves $1. Bentrick died before the testator.

To divide the income from the residue of the estate as follows:

To Wm. F. Brown, one-sixth.

To Samuel T. Brown, one-sixth.

To Martha W. Mink, one-sixth.

To Isabel F. Champion, one-sixth.

To Ida E. Stant, Annie S. Edmonds, and Almira V. Brown, one-sixth.

To his grandchildren, Walter C. Bentrick and Elizabeth D. Brown, one-sixth, to be paid to them severally during their lifetime.

Upon the death of either of the two sons or two daughters first named, leaving children, the share was to go to the children. If no children, then to the survivors under the trust. Upon the death of either of the three daughters last named, the share was to go to the four children first named.

Elizabeth D. Brown, granddaughter, died after the execution of the will; and on January 4, 1901, testator executed a codicil to his will, making the following changes:

All personal property is bequeathed to Martha W. Mink.

The income, which, under the will, was divided into six parts, is to be divided into five parts, payable one-fifth each to the four children first named and one-fifth to the three daughters.

Walter C. Bentrick, instead of the share of income to him in the will, is to have house No. 2530 Jessup street, Philadelphia, for life, remainder in fee to his children.

The caveat was filed by Ida E. Stant and Almira V. Brown.

The issues were the usual ones of mental incompetency, undue influence, and fraud, and also involved the due execution of the will and codicil.

On the trial the caveatee proved, by the witnesses thereto, the due execution of the will and codicil.

At the conclusion of the evidence introduced by the caveators the court instructed the jury to answer the respective issues in favor of the will.

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## ARGUMENT.

It will be observed from the will and codicil that the testator divided his property in unequal portions among his children and grandchildren, except his son, George T. Brown, to whom he left one dollar. There is no complaint, however, from George T. Brown.

On the trial the caveators were allowed wide latitude in giving evidence of the domestic situation, conduct, and declarations of the testator (Rec. pp. 21, 22, 26 to 36, 38, 40 to 46, 48 to 54). This evidence shows that the testator was 72 years of age at the time of his death; that his wife died November 8, 1897; that he was a quick-tempered,

passionate man, profane in his language; that he retired from business twenty years prior to his death and during that period attended to his property and the collection of his rents until his last illness; that in November, 1899, Mary J. Brown, his granddaughter, being the daughter of his son George T. Brown, came to live with him on his invitation; that she was 22 years of age, and that she died July 5, 1900; that his daughter, Mrs. Mink, on his invitation, came to live with him July 6, 1900, the day after Mary J. died; that in December, 1899, his daughter, Mrs. Edmonds, with her five children, upon his invitation came to live with him; that in March, 1900 (Rec. pp. 22, 29), his house took fire, and he collapsed, was almost prostrated, nervous; that May 26, 1900, he had a fuss with his daughters, Almira Brown and Mrs. Edmonds, owing to their treatment of Mary J. Brown, and that on June 26, 1900, they all left the house except Mary J., who was ill at the time and died ten days after.

An examination of the record will disclose the fact that no evidence was introduced by the caveators which would have justified the submission of the case to the jury, and that the patience of the court was sorely taxed by repeated efforts to get in immaterial evidence and evidence that the court had ruled inadmissible.

## Exceptions.

Caveators took in all thirty-five exceptions to the ruling of the court.

Exceptions Nos. 1, 3, 21, 22, 26, 28, 29, 30, and 31 are to the refusal of the court to permit the declarations of Mary J. Brown to be given in evidence; No. 4 to the declaration of Bentrick, and Nos. 14 and 15 to those of Mrs. Mink.

A will can not be set aside by evidence of hearsay declarations of third parties.

Ormsby *vs.* Webb, 134 U. S. 47, 65, 66.

No. 2 (Rec. p. 21) was to an answer being stricken out as not responsive to the question.

The record shows beyond question that the answer was not responsive.

Nos. 7, 11, 18, 19, 20, 23, 24, 32 are to the refusal of the court to permit the caveators to show alleged improper relations between the testator and his granddaughter, Mary J. Brown.

When the question of the admissibility of this evidence was first presented the following took place:

> "The COURT (Rec. p. 26): Have you any other point in the case except that? I have said I would rule against you if I rule at all upon that question now. I have suggested you go on with the rest of the case, and the final disposition of that question may wait a little while. If you have no other evidence I will dispose of it now, and dispose of it against you.
>
> "Mr. KEIGWIN: Then I understand that our question is overruled.
>
> "The COURT: It is overruled.
>
> "Mr. KEIGWIN: I take an exception."

The order of proof is certainly within the discretion of the court, and it was the proper exercise of discretion by the court, under the peculiar circumstances of this case, to require the caveators to give some evidence of the actual exercise of influence by this poor girl over the testator, before permitting evidence of immoral relations between them from which influence might or might not be inferred.

Mary J. Brown had died sixteen days before the will was executed and six months before the codicil, which reaffirmed the will, was executed. She took and could not take any benefit under the will. She and her grandfather both dead, there was no one to defend her reputation and refute the vileness of the allegations against them. Even if true, under the circumstances it would not be proof.

The record (pp. 21, 22, 31, 38, 48, 49) shows that the old man bitterly resented these allegations against his granddaughter and that he believed they caused her illness and death.

No. 5 (Rec. p. 24) was to the refusal to permit Mrs. Champion to testify to peculiarities of her father in the last month of his life, the court stating that it was too remote from the time of making the will and that so far there was no evidence of unsoundness of mind before and after the making of the will to make the proposed evidence admissible.

Nos. 6 and 33 (Rec. pp. 24, 56) were to the refusal of evidence as to Mrs. Mink's conduct during her father's last illness, the court ruling that it was too remote and they must first introduce some evidence of influence on the part of Mrs. Mink.

Nos. 8, 9, 10, 13 (Rec. pp. 33, 37, 39) were to the refusal to permit the expression of opinion as to mental condition, on the ground that the witnesses had testified to nothing that a rational man might not do which would justify the expression of opinion, as is apparent from the testimony. Moreover no offer was made to show what they expected to prove by either witness.

No. 12 (Rec. p. 39) two exceptions as to influence of Mary J. Brown and of any attempt to gain any benefit from it.

In addition to objections previously considered there is nothing to show what was expected to be proved in answer to the question.

No. 16 (Rec. p. 44) was to refusal to allow Samuel Brown to state his opinion whether his father could come to Philadelphia alone, the court stating that it was merely a matter

of opinion and based on nothing, as he had already testified that his father came there alone and came safely.

No. 17 (Rec. p. 45) was to refusal to permit witness to continue as to Mary J. Brown being sneaky and would be startled when she came upon her unexpectedly.

No. 25 (Rec. p. 50) was to refusal to permit witness to continue rambling statement as to conduct of Mary J. Brown.

No. 27 (Rec. p. 51) was to refusal to admit postal card in evidence offered to show that in 1899 a will had been made in favor of Almira Brown, the court ruling that it was not competent proof.

No. 34 (Rec. p. 56) was to the remarks of the court, which evidently were clearly justified.

No. 35 (Rec. p. 56) was to the court, directing the jury to return a verdict in favor of the will, the court expressing the opinion that the competent evidence in the case would not justify a verdict against the will.

The statement of what the caveators expected to prove, referred to on pages 56 and 57, never was submitted.

It is respectfully submitted that all the rulings of the court were proper, and that the admonition of the Supreme Court of the United States in Beyer *vs.* Le Fevre, 186 U. S. 114–126, that in actions to set aside wills—

> "the testator can not be heard, and very trifling matters are pressed upon the attention of court or jury as evidence of want of mental capacity or of the existence of undue influence. Whatever rule may obtain elsewhere, we wish it to be distinctly understood to be the rule of the Federal courts that the will of a person found to be possessed of sound mind and memory is not to be set aside on evidence

tending to show only a possibility or suspicion of undue influence"—

well applies to this case. And also the remarks of the Court of Appeals of Maryland in Safe Deposit & Trust Company *vs.* Berry, 93 Md. 560, as follows:

"The tendency to assail last wills upon the ground of mental incapacity, and by frivolous and inconclusive evidence, chiefly of a speculative character, when the testator has not disposed of his property in a way to suit disappointed and, often, distant and distasteful relations, has grown to such alarming proportions in late years that the courts should be resolute in adhering to the old and long-settled principles of the law respecting the admissibility of evidence, allowing no relaxation or refined modifications of them in this class of cases, if last wills and testaments are to be at all upheld by juries. It is no uncommon thing to see testamentary dispositions questioned, and it sometimes happens that they are successfully questioned, though there never had been a suspicion of the testator's capacity during his lifetime, nor after his death, until the contents of his will became known, and the expectations of collateral kindred were defeated by its provisions. These kindred frequently think they ought to have been the objects of his bounty, and because he thought differently they conclude he was incapable of intelligently thinking at all. Because what he did does not comport with what they believe he should have done, they assume he was mentally unsound, and forthwith attack his will, though they never doubted his ability to make a will until they discovered that he had made one which ignored or dissatisfied them. It is time that such groundless assaults should cease, and it is the plain duty of the courts to give them no encouragement or countenance."

WM. F. MATTINGLY,
*Attorney for Caveatee.*